

No. 10434

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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JOSEPHINE WELCH OVERTON, as Executrix  
of the Estate of Galen H. Welch, deceased,  
formerly Collector of Internal Revenue for the  
Sixth Collection District of California,  
Appellant,

vs.

MAE H. SAMPSON, individually and as Execu-  
trix under the will of W. O. Sampson, deceased,  
Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

FILED

JUL 16 1943

PAUL P. O'BRIEN,  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

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United States Attorney,

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Assistant United States Attorney,

600 U. S. Post Office & Court House Bldg.

Los Angeles, California

For Appellee:

FRANK MERGENTHALER, Esq.

1102 Fidelity Bldg.

Los Angeles, California. [1\*]

In the United States District Court in and for the  
Southern District of California, Central Division

At Law No. 7317S

MAE H. SAMPSON, individually and as Executrix  
under the Will of W. O. Sampson, Deceased,  
Plaintiff,

vs.

GALEN H. WELCH, formerly Collector of Internal  
Revenue for the Sixth Collection District of  
California,

Defendant.

## COMPLAINT

### REFUND OF FEDERAL ESTATE TAXES

Comes now Mae H. Sampson, individually and as Executrix under the Will of W. O. Sampson, deceased, the plaintiff above named, and for a cause of action against the defendant, Galen H. Welch, formerly Collector of Internal Revenue for the Sixth Collection District of California, alleges:

#### I.

That the said W. O. Sampson was the husband of the plaintiff, Mae H. Sampson; that the plaintiff is a resident of the County of Los Angeles, State of California, and that the jurisdiction of this Court is dependent upon a Federal question in that the cause of action arises under the laws of the United States of America pertaining to the Internal Revenue, to-wit: the Revenue Act of 1926.

## II.

That at the time of the collection from the plaintiff as Executrix under the Will of the said W. O. Sampson, deceased, and the disbursements to the defendant of the Federal estate taxes hereinafter referred to, the defendant, Galen H. Welch was the Collector of Internal Revenue in and for the Sixth Collection District of California, and maintained his office as such Collector in the City of Los Angeles, State of California. [2] That the said Galen H. Welch retired from his office as such Collector of Internal Revenue on or about the 30th day of June, 1933, and was not in office as such Collector at the time of the commencement of this action.

## III.

That this action is brought against the defendant as an officer of the United States of America acting under and by virtue of the Revenue Act of 1926, and on account of acts done by the defendant under color of said office and of the Revenue Laws of the United States as will hereinafter more fully and at large appear.

## IV.

That on the 23rd day of May, 1929, and for a long time prior thereto, the said W. O. Sampson, sometimes called William O. Sampson, and the plaintiff, Mae H. Sampson, were husband and wife respectively. That the said W. O. Sampson and Mae H. Sampson had been residents of the State of California from about the year 1909. That on

the said 23rd day of May, 1929, the plaintiff, Mae T. Sampson and the said W. O. Sampson, made, executed and delivered each to the other a written agreement, a copy of which is set forth in "Exhibit A" hereto annexed and made a part hereof by reference.

## V.

That the said W. O. Sampson departed this life on the 28th day of December, 1930, at the City of Los Angeles, State of California, having first made and published his Last Will and Testament in writing, which was duly admitted to probate by the Superior Court of the State of California, in and for the County of Los Angeles on the 23rd day of January, 1931; that a copy of the said Will is hereto annexed, marked "Exhibit B" and made a part hereof by reference. That the said Superior Court granted and issued to Mae H. Sampson, under the name of [3] Mae Sampson, letters testamentary upon the said Will. That the said Mae H. Sampson has been at all times since the issuance of said letters testamentary and now is the duly acting and qualified Executrix under the Will of the said W. O. Sampson, deceased, and has not been discharged or removed from her office as such Executrix.

## VI.

That the said agreement dated May 23, 1929, hereinbefore referred to has at all times since said date remained in full force and effect.

## VII.

That on or about the 2nd day of August, 1932, the Superior Court of the State of California, in and for the County of Los Angeles, made and entered its order of distribution under the Will of said decedent by which all of the property of the said decedent was distributed to Mae H. Sampson under the terms of the said Last Will and Testament.

## VIII.

That on or about the 21st day of December, 1931, the plaintiff, as Executrix under the Will of W. O. Sampson, deceased, filed with the defendant, as Collector of Internal Revenue for the Sixth Collection District of California, a Federal return for Federal estate taxes upon the estate of the said W. O. Sampson, deceased, pursuant to the provisions of the Revenue Act of 1926. That the return so filed by the plaintiff disclosed a net taxable estate of \$237,136.21. That thereafter the Bureau of Internal Revenue audited the said tax return and made certain adjustments therein, claiming that the net estate subject to Federal estate taxes was \$294,606.15, upon which the Bureau of Internal Revenue asserted a net estate tax of \$2,316.16. That between December 16, 1931, and December 28, 1932, the plaintiff, Mae H. Sampson, as Executrix under the Will of W. O. Sampson, deceased, paid to the defendant, Galen H. Welch, as Collector of Internal Revenue for the Sixth Collection District of California, the [4] following amounts upon account of said estate tax; said pay-

ments having been made upon the dates set opposite each amount:

Date of Payment	Amount Paid
December 16, 1931.....	\$ 1,197.00
December 23, 1932.....	223.81
December 28, 1932.....	254.21

Total amount paid between said dates..\$ 1,675.11

That of the amounts so paid the sum of \$1,429.90 was erroneously and illegally collected by the defendant for the reason that the plaintiff, Mae H. Sampson, as an individual, had a vested interest in one-half of the community property owned by the decedent and the said Mae H. Sampson; which said one-half interest was not subject to the Federal estate tax upon the death of the said W. O. Sampson. That the said vested one-half interest in the said property was acquired by the said Mae H. Sampson under and by virtue of the terms of the said agreement dated May 23, 1929, a copy of which is set forth in "Exhibit A" hereto annexed. That said agreement was not made in contemplation of death, and the Bureau of Internal Revenue declined and refused to recognize the validity of said agreement and the effect thereof and included in the gross estate of the decedent, W. O. Sampson, the one-half interest belonging to the plaintiff, Mae H. Sampson, and computed the estate tax upon the interest of both W. O. Sampson and Mae H. Sampson in the property. That had the Bureau of Internal Revenue given effect to the said agreement the correct Federal estate tax liability of the estate of W. O. Sampson, deceased, would have



been \$245.21 instead of \$2,316.16 as determined by the Commissioner of Internal Revenue; that the correct computation of the Federal estate tax liability of the estate of W. O. Sampson is set forth in detail in "Exhibit A", a copy of which is hereto annexed.

### IX.

That on or about the 24th day of November, 1933, and [5] within three years from the date of the payment by the plaintiff, as Executrix under the Will of W. O. Sampson, deceased, to the defendant of the said sum of \$1,429.90, the plaintiff, Mae H. Sampson, as Executrix under the Will of W. O. Sampson, deceased, filed with the Collector of Internal Revenue at Los Angeles, California, a written claim for refund of the Federal estate tax so erroneously assessed and collected by the defendant from the plaintiff, as Executrix under the Will of W. O. Sampson, deceased. That the basis of the claim for refund was the same as that set forth in this complaint, to-wit: that the Commissioner of Internal Revenue erroneously included in the gross taxable estate of W. O. Sampson, deceased, the interest in the property acquired by the plaintiff, Mae H. Sampson under the terms and provisions of the said agreement dated May 23, 1929; a true and correct copy of said claim for refund is hereto annexed, marked "Exhibit A", and made a part of this complaint.

### X.

That thereafter, to-wit, on or about the 13th day of July, 1934, the Commissioner of Internal

Revenue, by his duly authorized Deputy, in writing, notified the plaintiff, Mae H. Sampson, as Executrix under the Will of W. O. Sampson, deceased, that the said claim for refund so filed by her as aforesaid, was rejected in its entirety.

### XI.

That the defendant erroneously and unlawfully collected, and is now erroneously and unlawfully withholding, the above mentioned sum of \$1,429.90 so paid by the plaintiff as Executrix under the Will of W. O. Sampson, deceased, to the defendant and the said defendant is indebted to the plaintiff in the said sum of \$1,429.90, with interest on the sum of \$951.88 at the rate of 6% per annum from the 16th day of December, 1931, until paid, together with interest on the sum [6] of \$223.81 from the 23rd day of December, 1932, at the rate of 6% per annum until paid, together with interest on the sum of \$254.21 from the 28th day of December, 1932, at the rate of 6% per annum until paid.

### XII.

That no action upon the claim herein referred to, other than herein set forth, has been taken before Congress or before any of the departments of the Government of the United States, or in any court. That no assignment or transfer of said claim has ever been made, and plaintiff is the sole owner thereof. That plaintiff is justly entitled to the amount herein claimed from the defendant

and there is no just credit or offset against said claim which is known to the plaintiff.

Wherefore, the plaintiff prays judgment against the defendant in the sum of \$1,429.90, with interest on the sum of \$951.88 at the rate of 6% per annum from the 16th day of December, 1931, until paid, together with interest on the sum of \$223.81 from the 23rd day of December, 1932, at the rate of 6% per annum until paid, together with interest on the sum of \$254.21 from the 28th day of December, 1932, at the rate of 6% per annum until paid, together with her costs of suit.

FRANK MERGENTHALER  
Attorney for Plaintiff. [7]

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EXHIBIT A  
CLAIM

To Be Filed With the Collector Where Assessment  
Was Made or Tax Paid

Collector's Stamp  
(Date received)

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

- Refund of Tax Illegally Collected.
- Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- Abatement of Tax Assessed (not applicable to estate or income taxes).

State of California

County of Los Angeles—ss:

(Type or Print)

Name of taxpayer or purchaser of stamps Estate  
of W. O. Sampson, deceased

Business address 213 No. Norton Avenue  
(Street)

Los Angeles California  
(City) (State)

Residence -----

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed  
6th District of California

2. Period (if for income tax, make separate form for each taxable year) from -----, 19---, to -----, 19----

3. Character of assessment or tax Federal estate tax.

4. Amount of assessment, \$2,316.16; dates of payment 12/16/31—12/23/32—12/28/32

5. Date stamps were purchased from the Government -----

6. Amount to be refunded \$1,429.90

7. Amount to be abated (not applicable to income or estate taxes) \$-----

8. The time within which this claim may be legally filed expires, under Section 319 (b) of the Revenue Act of 1926, on December 24, 1935

The deponent verily believes that this claim should be allowed for the following reasons:

This claim is based upon the statement of facts here to annexed, marked Exhibit A, and made a part of this claim by reference.

(Attach letter size sheets if space is not sufficient)

Signed ESTATE OF W. O. SAMPSON,  
deceased

By MAE H. SAMPSON  
Executrix

Sworn to and subscribed before me this 21 day of November, 1933.

[Seal]

JESS CHENOWETH,

(Signature of officer administering oath)

Notary Public

(Title)

My Commission Expires June 8th, 1935. [8]

---

EXHIBIT A.

Statement of Facts Annexed to Claim of Estate of  
W. O. Sampson for Refund of Federal State  
Tax.

W. O. Sampson and Mae H. Sampson were husband and wife, and were for many years prior to the date of the death of the said W. O. Sampson residents of the State of California. At the time they took up their residence in that state they had no separate property. On May 23, 1929, the said W. O. Sampson and Mae Sampson entered into an

agreement of which the following is a true and correct copy: [10]

This Agreement, made this 23rd day of May, 1929, between William O. Sampson, first party, and Mae Sampson, second party, both residing at Los Angeles, California,

Witnesseth: Whereas, the parties hereto intermarried on or about October 3, 1899, and since that time have been and now are husband and wife and living together as such; and

Whereas, said parties, since the date of their marriage have acquired certain property which, by virtue of the laws of the State of California and/or written agreement between the parties hereto, is the community property of the parties hereto; and the parties hereto are desirous that the rights and interests of the respective parties hereto in and to all their community property be expressly defined and established in accordance with the terms and provisions hereof;

Now, Therefore, in consideration of the love and affection which each of the parties hereto bears unto the other and of other good and valuable consideration, moving from each of the parties unto the other, it is hereby agreed as follows:—

1. That all property now owned by the first party shall be and the same is hereby declared to be community property of the parties hereto.

2. That the respective interests of the parties hereto in their community property during continuance of the marriage relation are and shall be present, existing and equal interests under the

management and control of the husband, first party hereto, as is provided in Sections 172 and 172 (a) of the Civil Code of the State of California.

3. That this agreement is intended and shall be construed as defining the respective interests and rights of the parties hereto in and to all community property, and the rents, issues and profits thereof, heretofore or hereafter acquired by the parties hereto during the continuance of said marriage relation.

First party does hereby assign, transfer and convey unto second party such right, title and interest in and to said community property as may be necessary to carry into full force and effect the terms of this instrument.

In Witness Whereof, the parties hereto have hereunto set their hands the day and year first above written.

WILLIAM O. SAMPSON  
MAE SAMPSON. [11]

State of California  
County of Los Angeles—ss.

On this 23rd day of May, 1929, before me, Laura J. Henderson, a Notary Public in and for said County, personally appeared William O. Sampson and Mae Sampson, known to me to be the persons whose named are subscribed to the within instrument and acknowledged that they executed the same.

Witness my hand and official seal.

[Seal]

LAURA J. HENDERSON

Notary Public in and for the County of Los Angeles,  
State of California.

My commission expires Mar. 4, 1930. [12]

---

Section 158 of the Civil Code of the State of California, at the time of the execution of the said agreement, provided as follows:

“Husband and wife may make contracts. Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying the confidential relations with each other, as defined by the title on trusts.”

Section 161a of the Civil Code of the State of California, effective as of July 29, 1927, provides as follows:

“Interests in community property. The respective interests of the husband and wife in community property during continuance of the marriage relation are present, existing and equal interests under the management and control of the husband as is provided in sections 172 and 172a of the Civil Code. This section shall be construed as defining the respective interests and rights of husband and wife in community property.”



It is the contention of the claimant that by virtue of the said agreement and of the foregoing sections of the law of California that at the date of the death of W. O. Sampson, to-wit: December 28, 1930, all of the property owned by the decedent and the said Mae H. Sampson, his wife, was community property in which she had a vested interest to the extent of one-half thereon, and that the share or interest so vested in her was not subject to Federal estate tax upon the death of the said W. O. Sampson.

In computing the Federal estate tax upon the estate of the said decedent, the share of the said Mae H. Sampson was included therein and the Federal estate tax was computed thereon. The tax so assessed thereon has been partially collected. That of the amount so collected \$1,429.90 was erroneously and illegally collected. The said sum of \$1,429.90 is made up as follows: [13]

Total gross estate as per Conferee's Revision dated July 28, 1932.....		\$193,109.15	
Total deduction as per Conferee's Revision		\$198,503.00	
Less:			
Widow's allowance .....	\$ 22,000.00		
Exemption .....	100,000.00		
			\$416,606.15
Total net community property.....			
Less vested interest of Mae H. Sampson under agreement of May 23, 1929.....			208,303.07
			<u>\$208,303.08</u>
Widow's allowance .....	\$ 22,000.00		
Exemption .....	100,000.00		
			<u>122,000.00</u>
Net estate subject to Federal Estate Tax....			<u><u>\$ 86,303.08</u></u>

COMPUTATION OF TAX

Tax on .....	\$ 50,000.00	\$	500.00
Tax at 2% on.....	36,303.08		726.06
			<hr/>
Taxable net estate.....	\$ 86,303.08		
			<hr/>
Total Federal Tax.....		\$	1,226.06
Less credit for California Inheritance Tax.....			980.85
			<hr/>
Correct net Federal Estate Tax.....		\$	245.21
			<hr/> <hr/>
Amount of tax paid Dec. 16, 1931....	\$ 1,197.09		
Amount of tax paid Dec. 23, 1932....	223.81		
Amount of tax paid Dec. 28, 1932....	254.21		
			<hr/>
Total tax paid.....	\$ 1,675.11		
Correct tax liability.....	245.21		
			<hr/>
Total overpayment of Tax.....	\$ 1,429.90		
			<hr/> <hr/>

[14]

EXHIBIT B

WILL

I, William Orlando Sampson, a resident of the City of Los Angeles, County of Los Angeles, State of California, being of the age of forty-six years, do make, publish and declare this my Last Will and Testament, hereby revoking all former wills by me at any time made.

First: I give, bequeath and devise to my beloved wife, Mae Sampson, all of my property of every kind and nature whatsoever and wheresoever situated.

Second: I make no provision for our children, Wilma Maud Sampson, Ruth Anna Sampson, Ralph Herrick Sampson and Clement Griffith Sampson, but leave the care and maintenance of said children to my said wife.

Third: I hereby nominate and appoint my said wife, Mae Sampson, executrix of this my Last Will and Testament, and request that she shall not be required to give any bond for the faithful performance of her duties as such executrix. And I hereby authorize my said executrix to sell, lease or otherwise dispose of all or any part of my said estate without the order of any Court, at either public or private sale, with or without notice, and for such consideration and upon such terms as my said executrix may see fit.

In Witness Whereof, I have hereunto signed my name at Los Angeles, California, on this 9th day of November, 1918.

WILLIAM ORLANDO  
SAMPSON.

The foregoing instrument was, at the date hereof, by the said William Orlando Sampson signed and published as, and declared to be, his Last Will and Testament, in the presence of us, who, at his request and in his presence and in the presence of

each other, have subscribed our names as witnesses hereto.

W. W. MILLER,

Residing at 1943 So. Arlington St., Los Angeles.

W. E. GOODHUE,

Residing at 319 N. Jackson St., Glendale, Calif.

(Complaint Duly Verified by Mae H. Sampson, Aug. 30, 1935.) [15]

[Endorsed] Filed Aug. 30, 1935. [16]

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[Title of District Court and Cause.]

### ANSWER

Comes now the defendant in above entitled action, and in answer to plaintiff's complaint, admits, denies and alleges:

#### I.

Admits the allegations contained in paragraphs I, II, III, and X of plaintiff's complaint.

#### II.

In answer to paragraph IV of plaintiff's complaint, defendant has not information or belief sufficient to enable him to answer and on that ground denies each and every allegation therein contained.

## III.

In answer to paragraph V of plaintiff's complaint defendant denies each and every allegation therein contained, except the allegation that W. O. Sampson departed this life on the 28th day of December, 1930.

## IV.

In answer to paragraphs VI and VII of plaintiff's complaint defendant has not information of belief sufficient to enable him to answer, and on that ground denies each and every allegation in said paragraphs contained.

## V.

In answer to paragraph VIII of plaintiff's complaint, defend- [17] ant admits that on or about the 21st day of December, 1931, the plaintiff, as executrix under the Will of W. O. Sampson, deceased, filed with the defendant a Federal estate tax return upon the estate of said decedent; that the returns so filed by plaintiff disclosed a net taxable estate of \$237,136.21; that thereafter the Bureau of Internal Revenue audited said tax return, made certain adjustments therein, claiming that the net estate subject to Federal estate taxes was \$294,606.15 upon which the Bureau of Internal Revenue asserted a net estate tax of \$2,316.16; that between December 16, 1931, and December 28, 1932, the plaintiff, as such Executrix, paid to the defendant the amounts alleged in said paragraph of plaintiff's complaint, upon account of said estate tax; that the Bureau of Internal Revenue declined

and refused to recognize the validity and effect of the agreement of May 23, 1929, between plaintiff and said decedent and included in the gross estate of said decedent the one-half interest which plaintiff claims and alleges was vested in her at the date of her husband's death, and computed the estate tax upon all of the property and not upon a one-half interest therein.

Defendant denies each and every other allegation in paragraph VIII of plaintiff's complaint contained.

#### VI.

In answer to paragraph IX of plaintiff's complaint defendant admits that on or about the 24th day of November, 1933, the plaintiff filed with the Collector of Internal Revenue at Los Angeles a written claim for refund of said Federal estate tax; that the basis of the claim for refund was that the Commissioner erroneously included in the gross taxable estate of said decedent the interest in the property alleged to have been acquired by the plaintiff under the terms and provisions of said alleged agreement of May 23, 1929.

Defendant denies each and every other allegation in said paragraph IX contained. [18]

#### VII.

In answer to paragraph XII of plaintiff's complaint defendant has not information or belief sufficient to enable him to answer and on that ground denies each and every allegation therein contained, except that defendant specifically denies that plain-

tiff is justly or otherwise entitled to the amount in her complaint claimed from the defendant, and denies that there is no just credit or offset against said claim.

Wherefore, having fully answered, defendant prays that he be hence dismissed with his costs in this behalf expended.

PEIRSON M. HALL,

United States Attorney.

E. H. MITCHELL,

Spec. Asst. U. S. Attorney.

EUGENE HARPOLE,

Special Attorney, Bureau of  
Internal Revenue.

Attorneys for Defendant. [19]

(Duly Verified.)

[Endorsed]: Filed Dec. 26, 1935. [20]



[Title of District Court and Cause.]

STIPULATION WAIVING TRIAL BY JURY

It Is Hereby Stipulated on behalf of the parties above named by their respective counsel that trial of the said cause by jury is hereby waived and that the same may be tried by Court.

Dated: September 15th, 1936.

FRANK MERGENTHALER,  
Attorney for Plaintiff.

PEIRSON M. HALL,  
United States Attorney.

E. H. MITCHELL,  
Special Asst. United  
States Attorney.

ALVA C. BAIRD,  
Special Attorney, Bureau  
of Internal Revenue.

EUGENE HARPOLE,  
Special Attorney, Bureau  
of Internal Revenue,  
Attorneys for Defendant.

[Endorsed]: Filed Sept. 15, 1936. [21]

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PLAINTIFF'S EXHIBIT No. 1

[Title of District Court and Cause.]

STIPULATION AS TO FACTS

The parties hereto by their undersigned counsel of record hereby stipulate and agree that the fol-

lowing facts in the above case shall be taken and deemed by the Court as proved upon the filing of this stipulation, subject to the right of either party to introduce other and further evidence not inconsistent with the terms of this stipulation.

### I.

W. O. Sampson was the husband of the plaintiff, Mae H. Sampson. The said W. O. Sampson and the plaintiff, Mae H. Sampson, were married on or about the 3rd day of October, 1899. The plaintiff is a resident of the County of Los Angeles, State of California, and the jurisdiction of this Court is dependent upon a Federal question in that the cause of action arises under the laws of the United States of America pertaining to the Internal Revenue, to-wit: the Revenue Act of 1926.

### II.

At the time of the collection from the plaintiff as Executrix under the Will of the said W. O. Sampson, deceased, and the payments to the defendant of the Federal estate taxes hereinafter referred to, the defendant, Galen H. Welch, was the [22] Collector of Internal Revenue in and for the Sixth Collection District of California, and maintained his office as such Collector in the City of Los Angeles, State of California. The said Galen H. Welch retired from his office as such Collector of Internal Revenue on or about the 30th day of June, 1933, and was not in office as such Collector at the time of the commencement of this action.

## III.

This action is brought against the defendant as an officer of the United States of America acting under and by virtue of the Revenue Act of 1926, and on account of acts done by the defendant under color of said office and of the Revenue Laws of the United States as will hereinafter more fully and at large appear.

## IV.

On the 23rd day of May, 1929, and for a long time prior thereto, the said W. O. Sampson, sometimes called William O. Sampson, and the plaintiff, Mae H. Thompson, were husband and wife respectively. The said W. O. Sampson and Mae H. Sampson had been residents of the State of California from about the year 1909.

## V.

The said W. O. Sampson died on the 28th day of December, 1930.

## VI.

On or about the 21st day of December, 1931, the plaintiff, as Executrix under the Will of W. O. Sampson, deceased, filed with the defendant, as Collector of Internal Revenue for the Sixth Collection District of California, a return for Federal estate taxes upon the estate of the said W. O. Sampson, deceased. The return so filed disclosed a net taxable estate of \$237,136.21. Thereafter the Bureau of Internal Revenue audited the said tax [23] return and made certain adjustments therein, claiming that the net estate subject to Federal

estate taxes was \$294,606.15, upon which the Bureau of Internal Revenue asserted a net estate tax of \$2,316.16. Between December 16, 1931, and December 28, 1932, the plaintiff, Mae H. Sampson, as Executrix under the Will of W. O. Sampson, deceased, paid to the defendant, Galen H. Welch, as Collector of Internal Revenue for the Sixth Collection District of California, the following amounts upon account of said estate tax; said payments having been made upon the dates set opposite each amount:

Date of Payment	Amount Paid
December 16, 1931.....	\$ 1,197.09
December 23, 1932.....	223.81
December 28, 1932.....	254.21
	<hr/>
Total amount paid between said dates.....	\$ 1,675.11

## VII.

The Bureau of Internal Revenue declined and refused to recognize the validity and effect of an alleged agreement claimed by the plaintiff to have been made, executed and delivered between the plaintiff, Mae H. Sampson, and the said William O. Sampson, dated the 23rd day of May, 1929, a copy of which alleged agreement is set forth as part of "Exhibit A" attached to the complaint herein, and included in the gross estate of the decedent, William O. Sampson, the one-half interest in the property claimed to have been acquired by the plaintiff, Mae H. Sampson, under and by virtue of the said alleged agreement.

## VIII.

On or about the 24th day of November, 1933, the plaintiff filed with the Collector of Internal Revenue at Los Angeles, California, a written claim for refund of the Federal estate tax so assessed and collected by the defendant from the plaintiff, as Executrix under the Will of W. O. Sampson, deceased. The basis of the claim for refund was that the Commissioner of [24] Internal Revenue erroneously included in the gross taxable estate of W. O. Sampson, deceased, the interest in the property claimed to have been acquired by the plaintiff, Mae H. Sampson, under the terms and provisions of the said alleged agreement dated May 23, 1929.

## IX.

Thereafter, to-wit, on or about the 13th day of July, 1934, the Commissioner of Internal Revenue, by his duly authorized Deputy, in writing, notified the plaintiff, Mae H. Sampson, as Executrix under the Will of W. O. Sampson, deceased, that the said claim for refund so filed by her as aforesaid was rejected in its entirety.

## X.

That no part of the sums so paid by the plaintiff, Mae H. Sampson, as Executrix of the estate of W. O. Sampson, deceased, to the defendant as hereinbefore set forth, has been paid, refunded or credited, and there is no offset against the claim of the plaintiff herein for a refund of the same.

## XI.

No action upon the claim for refund hereinbefore

referred to, other than as herein set forth, has been taken before Congress or before any of the Departments of the Government of the United States, and that no action has been brought upon said claim for refund except the present action.

## XII.

The total gross estate upon which the United States Bureau of Internal Revenue computed the estate tax upon the estate of W. O. Sampson was \$493,109.15, which said value was fixed as of December 28, 1930, the date of the death of said W. O. Sampson. This amount is made up as follows:

Real Estate, all of which is situate in the State of California .....	\$ 32,842.46
Real estate, all of which is situate in the State of California, held in joint tenancy by the	
	[25]
decedent and the plaintiff, Mae H. Sampson..	35,532.88
Corporate Common and Preferred stocks evidenced by certificates .....	312,273.88
Corporate bonds payable to bearer with interest accrued to December 28, 1930.....	8,974.90
Unsecured negotiable [Initialed F.M., E.H.M.] promissory notes with accrued interest thereon and checks payable to W. O. Sampson....	25,959.91
Life insurance payable to the plaintiff, Mae H. Sampson....	\$109,331.88
Less amount exempt under Section 302 (g) of the Revenue Act of 1926.....	40,000.00
	69,331.88
Salary (bonus) accrued at the date of decedent's death .....	6,213.24
Household furniture and automobile.....	1,980.00
	Total Gross Estate.....\$493,109.15

The said sum of \$493,109.15 includes the one-half interest in the property claimed by the plaintiff, Mae H. Sampson under and by virtue of the terms of the said alleged agreement dated May 23, 1929, hereinbefore referred to. Of the property above mentioned all of the real estate, including that held in joint tenancy, was acquired after 1917 and prior to the 29th day of July, 1927. The unsecured promissory notes were acquired by W. O. Sampson in 1928. The accrued salary above mentioned was earned in 1930. All of the above mentioned stocks and bonds were acquired subsequent to 1917, and the household furniture and automobile were acquired subsequent to 1917.

Dated: Los Angeles, California, December 14, 1936.

FRANK MERGENTHALER,  
Attorney for Plaintiff.

PEIRSON M. HALL,  
U. S. Attorney.

EDWARD H. MITCHELL,  
Spec. Asst. U. S. Attorney.

ALVA C. BAIRD,  
Spec. Attorney, Bureau of Internal Revenue.

EUGENE HARPOLE,  
Spec. Attorney, Bureau of Internal Revenue.  
Attorneys for Defendant.

[Endorsed]: No. 7317-S—Plaintiff's Exhibit No.

1. Filed Dec. 14, 1936. [26]

At a stated term, to-wit: The February Term, A. D. 1937, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday, the 31st day of August in the year of our Lord one thousand nine hundred and thirty-seven.

Present: The Honorable Albert Lee Stephens, District Judge.

[Title of Cause.]

ORDER VACATING ORDER OF  
SUBMISSION

Frank Mergenthaler, Esq., appearing for the plaintiff; Eugene Harpole, Special Assistant Attorney of the United States Treasury Department;

Counsel stipulate and it is ordered that the order of submission to Judge Stephens be, and it is, vacated and set aside and the cause is submitted to Judge Jenney on the same evidence and briefs now on file, with the privilege of either party or the Court to request reargument.

105/678 [27]

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At a stated term, to-wit: The February Term, A. D. 1938, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los An-



geles on Wednesday, the 18th day of May in the year of our Lord one thousand nine hundred and thirty-eight.

Present: The Honorable Ralph E. Jenney, District Judge.

[Title of Cause.]

ORDER DENYING REQUEST FOR SPECIAL FINDINGS, ETC.

First: The requests for special findings, heretofore made subsequent to the date of trial and submission of the case, are denied.

Second: Counsel may, on Monday, June 6, 1938, at three o'clock p. m., reopen the case for the sole purpose of taking evidence as to the date of acquisition of certain stocks, bonds, household furniture, automobile and other personal property; it being understood that such reopening is not to be considered as a rehearing and evidence and argument are to be so limited. Should counsel find it unnecessary to take the time of the Court in this regard they should so notify the Court to that effect as soon as possible.

Third: Counsel may have one week thereafter, that is to and including the 13th day of June, 1938, within which to present to the Court computations showing the agreed amount or amounts to be inserted in the judgment.

Fourth: If counsel are unable to agree upon such computations, the Court will, on Thursday, June 16, 1938, at eight-thirty o'clock a. m., permit the reopening of the case in strict accordance with the

provisions of Rule 50 of the Rules of Practice before the United States Board of Tax Appeals, in order to determine final computations.

Fifth: Findings of fact and conclusions of law in accordance with the Court's opinion, as modified, should be presented on or before June 22, 1938.

109/670 [28]

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[Title of District Court and Cause.]

SUPPLEMENTAL STIPULATION  
AS TO FACTS

The parties hereto by their undersigned counsel of record hereby stipulate and agree that the following additional facts in the above case shall be taken and deemed by the Court as proved upon the filing of this stipulation.

I.

That of the property included by the Commissioner of Internal Revenue in computing the Federal Estate Tax upon the Estate of W. O. Sampson, the plaintiff's decedent, (a) that which is itemized in "Exhibit A", hereto annexed and made a part of this stipulation, was separate or community property acquired prior to July 29, 1927, upon the dates indicated in said Exhibit; (b) that the property which is itemized in "Exhibit B" hereto annexed and made a part of this stipulation, was community property acquired between July 29, 1927, and May 23, 1929, upon the dates indicated in said Exhibit; (c) that the property which is itemized

in "Exhibit C" hereto annexed and made a part of this stipulation, was community property acquired between May 23, 1929, and December 28, 1930, upon the dates indicated in said Exhibit; (d) that the property which [29] is itemized in "Exhibit D", hereto annexed and made a part of this stipulation, was joint tenancy property of the decedent and Mae H. Sampson, his wife, acquired upon the dates indicated in the said Exhibit; (e) that the proportions of proceeds of life insurance policies attributable to community income earned between July 29, 1927, and December 30, 1928, is set forth in "Exhibit E", hereto annexed and made a part of this stipulation.

## II.

(a) That the aggregate values of each item of property listed in Exhibits A, B, C, D and E are the gross values fixed by the Commissioner of Internal Revenue in computing the Federal Estate Tax upon the decedent's estate. That the total gross values as so fixed are as follows:

Exhibit A.....	\$367,658.91
“ B.....	26,399.86
“ C.....	21,057.58
“ D.....	35,532.88
“ E.....	82,266.67
	<hr/>
Total.....	\$532,915.90

## III.

(a) That the values hereinbefore set forth are gross values without any deductions for debts, exemptions or allowances. (b) That in computing the

net estate of the decedent the Commissioner allowed the following exemptions and deductions as indicated in Plaintiff's Exhibit No. 4 offered and received in evidence at the trial of the above cause:

Miscellaneous deductions .....	\$ 98,503.00
Specific exemptions .....	100,000.00
Life insurance exemptions .....	40,000.00
	Total.....
	\$238,503.00

The amounts of said deductions and exemptions are not in issue in this case. [30]

#### IV.

That hereto annexed is a computation of the Federal Estate Tax and of the overpayment of the same computed in accordance with the revised opinion of Hon. Ralph E. Jenney filed in the above case. It is expressly stipulated by the parties hereto that the said computation is without prejudice to the right of either party to contest the computation of the tax and the overpayment as computed in said "Exhibit F", upon the basis of the final determination of the law of the case, and that either party herein to have the right of redetermination of the said Federal Estate Tax and the amount of overpayment of the same, if any, in accordance with the final judgment in the above case.

#### V.

It is expressly stipulated that this stipulation does not give effect to the agreement between W. O. Sampson and the plaintiff Mae H. Sampson, dated May 23, 1929, introduced and received in evidence

as plaintiff's Exhibit 7 herein, and that the plaintiff does not waive the said agreement or its effect upon any of the property hereinbefore mentioned.

Dated this 6th day of June, 1938.

FRANK MERGENTHALER,  
Attorney for Plaintiff.

BEN HARRISON,  
United States Attorney.

E. H. MITCHELL,  
Asst. U. S. Attorney.

ALVA C. BAIRD,  
Asst. U. S. Attorney.

ARMOND MONROE JEWELL,  
Asst. U. S. Attorney.

EUGENE HARPOLE,  
Spec. Atty. Bureau of Internal Revenue.

By ARMOND MONROE JEWELL,  
Attorneys for Defendant.

[31]

## EXHIBIT A

## PROPERTY ACQUIRED BEFORE JULY 29, 1927

Reported on Fed. Est. Tax Return	Item	Assets	Date Acquired	How Acquired	Commissioner's Final Valuation
Schedule A	1	Real Est. 901-3 E. 9th St., Los Angeles...	5- 1-24	By Purch.	12,842.46
"	2	Real Est. 213 N. Norton Ave., Los Angeles			
B	1	3857.5 Shares—Bullock's	5-1923	By Purch.	20,000.00
"	1	7292.5 Shares—Bullock's	6-15-22	By Gift	92,580.00
"	21	100 Shares—Bullock's	9-1925	By Purch.	175,020.00
"	34	\$100 L. A. Union Term. Bond	6-16-22	By Gift	10,000.00
"	35	\$1000 Miller & Lux, 7%	3-1924	By Purch.	110.50
"	37	\$2000 Oakmont Country Club, 6% Bond	12-16-25	By Purch.	887.11
"	38	\$1000 Pacific SS. Co. 6½% Bond	3- 1-23	By Purch.	1,004.50
"	39	\$1000 Pacific Palisades Assn., 6½% Bond	1-30-25	By Purch.	350.00
C	1	Note of John G. Bullock	3- 9-27	By Purch.	1,005.90
"	2	Note of P. G. Winnett	5-11-27	By Purch.	12,883.33
"	16	Life Ins. Pol.—Penn. Mutual Life Ins. Co. #1114796	5- 5-24	By Purch.	3,011.91
"	17	Life Ins. Pol.—Union Central Life Ins. Co. #745121	1-13-23	By Purch.	3,260.07

Property Acquired Before July 29, 1927—(Continued)

Reported on Fed. Est. Tax Return	Item	Assets	Date Acquired	How Acquired	Commissioner's Final Valuation
Schedule C	18	Life Ins. Pol.—Provident Mutual Life Ins. Co. #406,409	5- 4-22	By Purch.	5,347.87
"	19	Life Ins. Pol.—Provident Mutual Life Ins. Co. #424100	1-15-23	By Purch.	3,309.47
"	20	Life Ins. Pol.—Provident Mutual Life Ins. Co. #461463	5- 3-24	By Purch.	3,032.65
"	21	Life Ins. Pol.—Provident Mutual Life Ins. Co. #505528	11-17-25	By Purch.	2,204.82
"	24	Life Ins. Pol.—Provident Mutual Life Ins. Co. #276752	5- 4-17	By Purch.	6,898.42
D-2	1	Household Goods	7-29-27	By Purch.	900.00
"	2	Household Goods	7-29-27	By Purch.	80.00
		Bank Account—Omitted in Return, Added by Revenue Agent's Report	Unknown		46.57
					<hr/> \$367,658.91

[32]

## EXHIBIT B

## PROPERTY ACQUIRED BETWEEN JULY 29, 1927, AND MAY 23, 1929

Reported on Fed. Est. Tax Return	Item	Assets	Date Acquired	How Acquired	Commissioner's Final Valuation
Schedule B	9	5 Shares Dilfer Bond & Mfg. Co., Common	9-23-27	By Purch.	450.00
"	9	5 Shares Dilfer Bond & Mfg. Co., Common	7-30-28	By Purch.	450.00
"	11	10 Shares General Mills, No Par Common	4-30-28	By Purch.	461.25
"	14	15 Shares Pac. Amer. Fire Ins. Co., Com- mon	12- 8-28	By Purch.	375.00
"	19	20 Shares Van de Kamp's Holland-Dutch Bakers	7-30-28	By Purch.	600.00
"	21	200 Shares Bullock's, Inc. Pref.	1928	By Purch.	20,000.00
"	29	5 Shares Van de Kamp's Holland-Dutch Bakers	7-30-28	By Purch.	425.00
"	30	\$1000 Bullock's, 6%, 1947 Gold Bonds....	10-13-27	By Purch.	994.60
"	32	\$1000 Chicago Great Western Ry., 4% Bond	5- 3-29	By Purch.	658.11
"	33	\$1000 Home Service Co., 6½%, 1942 Bond	12-15-27	By Purch.	985.90
D-2	3	Packard Motor Car.....	9-14-28	By Purch.	1,000.00

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 \$ 26,399.86

[33]



EXHIBIT C

PROPERTY ACQUIRED BETWEEN MAY 23, 1929, AND DECEMBER 28, 1930

Reported on Fed. Est. Tax Return	Item	Assets	Date Acquired	How Acquired	Commissioner's Final Valuation
Schedule B	2	15 Shares America Safety Razor Corp., No par com.	5- 6-30	By Purch.	840.00
"	3	15 Shares Caterpillar Tractor Co., no par common	10-31-29	By Purch.	384.37
"	3	5 Shares Caterpillar Tractor Co., no par common	6-11-30	By Purch.	128.13
"	3	10 Shares Caterpillar Tractor Co., no par common	9-29-30	By Purch.	256.25
"	4	50 Shares Citizens Nat'l Tr & Sav Bank, common	12-30-29	By Purch.	4,000.00
"	5	10 Shares Columbia Gas & Electric Co., common	5-1930	By Purch.	327.50
"	6	2 Shares Columbia Oil & Gasoline Co., common	1930	By Purch.	9.25
"	8	50 Shares Curtis Wright Corp., no par common	6-1929	By Purch.	112.50
"	10	10 Shares General Foods Corp., no par common	1930	By Purch.	472.25
"	12	12 Shares General Motors Corp., common.	9-29-30	By Purch.	409.50
"	13	10 Shares Nat'l Dairy Prod. Corp., no par common	6-1930	By Purch.	373.75
"	15	25 Shares Packard Motor Corp., no par common	6-11-30	By Purch.	209.38

## Property Acquired Between May 23, 1929, and December 28, 1930—(Continued)

Reported on Fed. Est. Tax Return	Item	Assets	Date Acquired	How Acquired	Commissioner's Final Valuation
Schedule B	16	12 Shares Phillips Petroleum Co., no par com.	9-30-30	By Purch.	156.00
"	17	12 Shares Taylor Milling Corp., no par common	9-29-30	By Purch.	234.00
"	18	20 Shares Union Oil Co. of Calif., common	9-1930	By Purch.	422.50
"	19	10 Shares Van de Kamp's Holland Dutch Bakers, Inc.	8-21-29	By Purch.	300.00
"	20	10 Shares Walworth Co., no par common	4-24-30	By Purch.	112.25
"	22	10 Shares Commonwealth & Southern Corp.	1930	By Purch.	905.00
"	24	10 Shares Wm. Filene's Sons Co., Pref.	9-30-30	By Purch.	905.00
"	25	12 Shs Gamewell Co.	6-10-30	By Purch.	730.00
"	26	15 Shares Grand Union Co., convertible preferred	5- 6-30	By Purch.	540.00
"	29	1 Share Van de Kamp's Holland Dutch Bakers, Pref.	8-21-29	By Purch.	85.00
"	31	\$1000 Caterpillar Tractor Co., 5%, 1935 Bond	1930	By Purch.	962.22
"	36	\$1000 Nat'l Dairy Prod. Co. 1948 Bond	8- 5-30	By Purch.	1,008.12
"	40	\$1000 Sinclair Cons. Oil Corp., 7%, 1937 Bond	1930	By Purch.	1,007.94
D-2	4	1930 Bonus—Bullock's	1930	Earned	6,166.67

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 \$ 21,057.58

[34]

# EXHIBIT D

## JOINT TENANCY PROPERTY

Reported on Fed. Est. Tax Return	Schedule D-1	Item	Assets	Date Acquired	How Acquired	Commissioner's Final Valuation
	1		Real Estate—907-9 East 9th St., Los Angeles	4-1-24	By Purch in Jt. Ten.	18,000.00
	2		Real Estate—4242-4242½ Normal Ave., Los Angeles	Prior to Jan. '24	"	8,000.00
	3		Real Estate—Lot 59, Tr. 1971, Los Angeles Co.	Prior to Jan. '24	"	600.00
	4		Bank Acct—Citizens Nat'l Tr & Sav	7-29-27	"	828.78
	4		Bank Acct—Citizens Nat'l Tr & Sav	5-23-29	"	144.50
	4		Bank Acct—Citizens Nat'l Tr & Sav Bank	5-23-29 & 12-28-30	"	7,253.83
	5		Fidelity Sav. and Loan Assn. certificate	Prior to 5-23-29	"	516.32
	6		Sav. Acct—First Nat'l Bank of Los Angeles	Prior to 1-1-24	"	189.45

\$ 35,532.88

[35]

## EXHIBIT E

PROPORTION OF PROCEEDS OF LIFE INSURANCE  
 ATTRIBUTABLE TO PREMIUMS PAID BETWEEN  
 7-29-27 and 12-30-28.

Reported on Federal Est. Tax Return	Item	Policy	Proportion of Commissioner's Final Valuation
Schedule C	16	Penn. Mutual Life Ins. Co. #1114796 .....	2,027.70
"	17	Union Central Life Ins. Co. #745121 .....	1,794.74
"	18	Provident Mutual Life Ins. Co. #406409 .....	2,782.16
"	19	Provident Mutual Life Ins. Co. #424100 .....	1,733.71
"	20	Provident Mutual Life Ins. Co. #461463 .....	1,992.79
"	21	Provident Mutual Life Ins. Co. #505528 .....	2,799.99
"	22	Provident Mutual Life Ins. Co. #577113 .....	6,034.00
"	23	Provident Mutual Life Ins. Co. #582438 .....	15,000.00
"	24	Provident Mutual Life Ins. Co. #276752 .....	3,101.58
"	26	New England Mutual Life Ins. Co. #61451 .....	15,000.00
"	25	New England Mutual Life Ins. Co. #690423 Acquired 11-4-30	10,000.00
"	27	New England Mutual Life Ins. Co. #690424 Acquired 11-4-30	20,000.00
			\$ 82,266.67

[36]

## EXHIBIT F

COMPUTATION OF NET ESTATE AND OF FEDERAL  
ESTATE TAX AND OVERPAYMENT THEREON

## COMPUTATION OF NET ESTATE

Gross Estate	
Computed in accordance with Judge Jenney's revised opinion .....	450,287.41
Less	
Amount of Insurance exempt.....	40,000.00
	<hr/>
	410,287.41
Deductions—as per conferee's report, dated July 28, 1932 (Plaintiff's Exhibit No. 4).....	198,503.00
	<hr/>
Net Estate .....	211,784.41
	<hr/> <hr/>

## COMPUTATION OF TAX

Net Estate .....	211,784.41	
1% on .....	50,000.00	500.00
	<hr/>	
	161,784.41	
2% on .....	50,000.00	1,000.00
	<hr/>	
	111,784.41	
3% on .....	100,000.00	3,000.00
	<hr/>	
4% on .....	11,784.41	471.38
		<hr/>
Aggregate Federal Estate Tax.....		4,971.38
Credit for California Inheritance tax Paid .....		3,977.10
		<hr/>
Federal Estate Tax as per Judge Jenney's Revised Opinion .....		994.28
		<hr/> <hr/>
Tax Paid by Plaintiff .....		1,675.11
Revised Tax .....		994.28
		<hr/>
Overpayment of Tax.....		680.83

[Endorsed]: Filed Jun. 6, 1938. [37]

[Title of District Court and Cause.]

SECOND SUPPLEMENTAL STIPULATION  
AS TO FACTS

The parties hereto, by their respective counsel undersigned, hereby stipulate and agree that the following additional facts in the above entitled action shall be taken and deemed by the court as proved upon the filing of this stipulation.

I.

Each of the two parcels of real estate referred to in Exhibit A attached to the Supplemental Stipulation as to Facts filed herein and dated June 6, 1938 (reported as Items I and 2 of Schedule A in Plaintiff's Estate Tax Return), was at the time of its purchase and acquisition deeded to plaintiff's husband, W. O. Sampson, and, continuously thereafter, stood of record in his sole name until after his death.

All of the certificates representing the shares of stock referred to in said Exhibit A were, at the times of their acquisitions, issued to, and in the sole name of, plaintiff's said husband and, continuously thereafter, stood in his sole name until after his death.

The bonds referred to in said Exhibit A were payable to bearer and at the time of their acquisition were delivered to and purchased by plaintiff's said husband with funds earned by him prior to July 29, 1927.

Each of the promissory notes referred to in said Exhibit A [38] was drawn to the sole order of

plaintiff's said husband and none was indorsed by him during his lifetime.

The life insurance items referred to in said Exhibit A represent the proportions of the proceeds of each of the seven listed policies attributable to premiums earned and paid by plaintiff's said husband prior to July 29, 1927. The premiums referred to in Exhibit E attached to said Supplemental Stipulation as to Facts were paid by plaintiff's said husband out of compensation for services rendered by him after July 29, 1927 and prior to his death.

## II.

All of the certificates representing shares of stock referred to in Exhibit B attached to said Supplemental Stipulation as to Facts were at the time of their acquisition issued to, and in the sole name of, plaintiff's said husband and, continuously thereafter, stood in his sole name until after his death.

The bonds referred to in said Exhibit B were payable to bearer and at the time of their acquisition were delivered to and purchased by plaintiff's said husband with funds earned by him after July 29, 1927, and before May 23, 1929.

## III.

All of the certificates representing shares of stock referred to in Exhibit C attached to said Supplemental Stipulation as to Facts were at the time of their acquisition issued to, and in the sole name of, plaintiff's said husband and, continuously thereafter, stood in his sole name until after his death.

The bonds referred to in said Exhibit C were payable to bearer and at the time of their acquisition were delivered to and purchased by plaintiff's said husband with funds earned by him after May 23, 1929.

The bonus item listed at the foot of said Exhibit C was compensation paid for services rendered his employer by plaintiff's said husband. [39]

#### IV.

It is expressly stipulated that this stipulation does not give effect to the agreement between W. O. Sampson and the plaintiff Mae H. Sampson, dated May 23, 1929, introduced and received in evidence as plaintiff's Exhibit 7 herein, and that the plaintiff does not waive the said agreement or its effect upon any of the property hereinbefore mentioned.

Dated this 30th day of June, 1938.

FRANK MERGENTHALER,

Attorney for Plaintiff.

BEN HARRISON,

United States Attorney.

E. H. MITCHELL,

Assistant United States  
Attorney.

By E. H. MITCHELL,

Attorneys for Defendant.

[Endorsed]: Filed Jul. 1, 1938. [40]



[Title of District Court and Cause.]

THIRD SUPPLEMENTAL STIPULATION  
AS TO FACTS

The parties hereto, by their respective counsel undersigned, hereby stipulate and agree that the following additional facts in the above entitled action shall be taken and deemed by the court as proved upon the filing of this stipulation.

I.

Each of the three items of joint tenancy real property referred to in Exhibit D attached to the Supplemental Stipulation as to Facts filed herein and dated June 6, 1938, was purchased by plaintiff's husband, W. O. Sampson, with funds earned by him prior to July 29, 1927. The portion of the bank account with Citizens National Trust and Savings Bank of Los Angeles, referred to in said Exhibit D as having been acquired prior to July 29, 1927, consisted of funds earned and deposited by plaintiff's said husband prior to said date. The portion of said bank account referred to in said Exhibit D as having been acquired between July 29, 1927 and May 23, 1929, consisted of funds earned and deposited by plaintiff's said husband between said dates. The portion of said bank account referred to as having been acquired between May 23, 1929 and December 28, 1930, consisted of funds earned and deposited by plaintiff's said husband between said dates. The Fidelity Savings and Loan Association certificate referred to in said Exhibit D was

purchased by plaintiff's said husband with funds earned by him after July 29, 1927. The [41] First National Bank savings account referred to in said exhibit consisted of funds earned and deposited by plaintiff's said husband prior to January 1, 1924.

## II.

It is expressly stipulated that this stipulation does not give effect to the agreement between W. O. Sampson and the plaintiff Mae H. Sampson, dated May 23, 1929, introduced and received in evidence as plaintiff's Exhibit 7 herein, and that the plaintiff does not waive the said agreement or its effect upon any of the property hereinbefore mentioned.

Dated this 5th day of August, 1938.

FRANK MERGENTHALER,

Attorney for Plaintiff.

BEN HARRISON,

United States Attorney.

E. H. MITCHELL,

Asst. U. S. Attorney.

By E. H. MITCHELL,

Attorneys for Defendant.

[Endorsed]: Filed Aug. 6, 1938. [42]

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At a stated term, to-wit: The September Term, A. D. 1940, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held

at the Court Room thereof, in the City of Los Angeles on Thursday the 9th day of January in the year of our Lord one thousand nine hundred and forty-one.

Present: The Honorable Ralph E. Jenney, District Judge.

[Title of Cause.]

MINUTE ORDER VACATING OPINION PREVIOUSLY RENDERED (23 FED. SUPP. 271)

The opinion of the United States Circuit Court of Appeals for the Ninth Circuit in the case of *United States v. Goodyear*, 99 F. 2d 523, having been called to the Court's attention; and it appearing to the court from an examination of said opinion that that case is involved facts almost identical—in legal effect—with those in the case at bar; and it further appearing to this Court that the said decision of the Ninth Circuit Court of Appeals in said *Goodyear* case is controlling, as a matter of legal precedent, over the issues in the case at bar, even though the opinion heretofore rendered in this cause (*Sampson v. Welch*, 23 Fed. Supp. 271) expresses the view of this court as to a proper determination of said issues.

It is therefore hereby ordered that the opinion heretofore rendered in this case be and it is hereby vacated and withdrawn; that findings, conclusions and judgment in accordance with the opinion in *United States v. Goodyear*, *supra*, be prepared by counsel for plaintiff herein, for presentation to this

court for signature in accordance with the provisions of Rule 8 of the rules of this court.

So ordered.

Dated: January 9th, 1941.

RALPH E. JENNEY,

United States District Judge.

17/211 [43]

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[Title of District Court and Cause.]

### ORDER OF SUBSTITUTION

This cause coming on regularly for hearing on the 16th day of February, 1942, on motion of plaintiff's attorney, Frank Mergenthaler, Esq., for the substitution of Josephine Welch Overton as a party defendant in the place and stead of Galen H. Welch, deceased, and it appearing to the Court that the said Galen H. Welch, the original defendant herein died on July 25, 1941, and that Josephine Welch Overton has been duly appointed Executrix of the Will of said Galen H. Welch, deceased, and that the claim set forth in the complaint was not extinguished by the death of said Galen H. Welch, deceased, and the Court being satisfied in the premises,

It Is Ordered that Josephine Welch Overton, Executrix of the Will of said Galen H. Welch, deceased, be and she is hereby substituted for the said Galen H. Welch, deceased, as a party defendant herein without prejudice to the proceedings [44] already had and that the case may be continued and maintained by the plaintiff above named

against the said Josephine Welch Overton as the personal representative of the said Galen H. Welch, deceased.

Dated: February 16th, 1942.

RALPH E. JENNEY,

Judge of the United States  
District Court.

Approved as to form as provided by Rule 8.

E. H. MITCHELL,

Asst. U. S. Atty.

[Endorsed]: Filed Feb. 16, 1942. [45]

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[Title of District Court and Cause.]

### SUPPLEMENTAL COMPLAINT

Comes now Mae H. Sampson, Individually and as Executrix under the Will of W. O. Sampson, Deceased, the plaintiff above named, and with leave of Court first had and obtained, files this her Supplemental Complaint, and alleges as follows:

#### I.

That since the filing of the complaint in the above case the following events have occurred:

(a) That Galen H. Welch, the defendant named in the original complaint on file herein, on or about the 25th day of July, 1941, departed this life leaving a Last Will and Testament in writing.

(b) The said Last Will and Testament has been duly admitted to probate by the Superior Court of the State of [46] California, in and for the County of Los Angeles.

(c) Letters Testamentary upon the said Last Will and Testament of the said Galen H. Welch, deceased have been issued by the Superior Court to Josephine Welch Overton, the Executrix named in the said Last Will and Testament.

(d) The said Josephine Welch Overton is now the duly appointed, qualified and acting Executrix of the Estate of said Galen H. Welch, deceased.

(e) Notice to Creditors of the said Galen H. Welch, deceased was first published on August 29, 1941.

(f) The plaintiff herein filed with the Clerk of the said Superior Court her claim against the said estate of Galen H. Welch, deceased, in the sum of \$1429.90 for Federal Estate taxes which the plaintiff claims were erroneously and illegally levied, assessed and collected upon the estate of the said W. O. Sampson, deceased, by the said Galen H. Welch, acting in his capacity as a Collector of Internal Revenue; the said claim being the identical claim which is the subject matter of the above action; said claim was filed on Feb. 4, 1942.

(g) Under date of March 29, 1942, the said Josephine Welch Overton, as Executrix of the Estate of said Galen H. Welch, deceased, rejected the said claim in writing.

(h) The said Josephine Welch Overton as Executrix of the estate of said Galen H. Welch, deceased, has been substituted as defendant in the above action in the place and stead of the said Galen H. Welch, deceased.

FRANK MERGENTHALER,

Attorney for Plaintiff. [47]

It Is Hereby Stipulated by the undersigned as attorney of record for the plaintiff above named and by Wm. Fleet Palmer, United States Attorney and E. H. Mitchell, Assistant United States Attorney, as attorneys of record for the defendant Josephine Welch Overton, as Executrix of the estate of Galen H. Welch, deceased, that the Court may make an order granting leave to the plaintiff to file in the above action the foregoing Supplemental Complaint.

FRANK MERGENTHALER

Attorney for Plaintiff.

WM. FLEET PALMER,

United States Attorney.

E. H. MITCHELL,

Asst. U. S. Attorney.

By E. H. MITCHELL,

Attorneys for Defendant.

It is so ordered. The plaintiff to serve upon counsel for the said Josephine Welch Overton, as Executrix of the estate of Galen H. Welch, deceased, a copy of said Supplemental Complaint. The said defendant is granted to and including the 10th day of June, 1942, within which to file an Answer to the said Supplemental Complaint.

Dated at Los Angeles, California, this 9th day of May, 1942.

RALPH E. JENNEY,

U. S. District Court Judge.

[Endorsed: Filed May 9, 1942. [48]]

[Title of District Court and Cause.]

ANSWER TO SUPPLEMENTAL COMPLAINT

Comes Now the defendant Josephine Welch Overton, as Executrix of the Estate of Galen H. Welch, Deceased, formerly Collector of Internal Revenue for the Sixth Collection District of California, and in answer to Plaintiff's Supplemental Complaint, admits each and every allegation therein contained.

WM. FLEET PALMER,  
United States Attorney.

E. H. MITCHELL,  
Assistant United States  
Attorney.

By E. H. MITCHELL,  
Ass't. U. S. Attorney.

[Endorsed]: Filed June 10, 1942. [50]

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[Title of District Court and Cause.]

DEFENDANT'S OBJECTIONS TO FORM OF  
FINDINGS AND CONCLUSIONS (LOCAL  
RULE 8)

Comes Now the defendant and objects to the form of the findings and conclusions drafted and proposed by plaintiff's counsel and served upon defendant on the 5th day of August, 1942. These objections are made upon the grounds that (a) such proposed findings and conclusions are incomplete, (b) they carefully evade the issues raised and de-



ecided by the Court, (c) they are misleading, and (d) they fail to comply with the requirements of Rule 52(a) of the Rules of Civil Procedure, in the [51] particulars pointed out below.

Among the four main issues raised at the trial and decided by the Court in this case were the following three:

First: Whether the "interest" in the husband's property given to the donee, wife, in 1929, was, under the laws of California, an "interest therein of the surviving spouse", within the meaning of Section 302(b) of the Revenue Act of 1926.

Second: Whether the husband, donor, in and by the 1929 gift or at any time before death, completely relinquished and transferred to the donee all his rights and powers of disposition, possession, enjoyment, dominion, management and control over the subject of the gift; whether he then or at any time before death transferred and completely relinquished to his wife all of his economic benefits arising from the transferred "interest"; and whether then or at any time before death the 1929 gift to his wife was completed; all within the meaning of Section 302(c) of the same Act.

Third: Whether the enjoyment by the donee of the interest transferred to her in 1929 was, at the time of the donor's death, subject to any change through the exercise by decedent of a retained power to alter, amend or revoke, within the meaning of Section 302(d) of the same Act.

Plaintiff's counsel proposes no express findings of fact or conclusions of law whatever in response

to the above three issues which were argued at length by counsel, considered by the trial court, and [52] treated at length in its scholarly opinion (23 F. Supp. 271-291).

Instead, the Court is requested by counsel to make two findings (XVIII and XIX) and one conclusion (VI) to the effect that the gift was not made in contemplation of death, a fact that was not questioned but was conceded by defendant at the trial. (23 F. Supp. 276, column 1.)

Further, instead of proposing findings upon the issues actually tried, the Court is asked to find (Finding XXIX, p. 15) that the Bureau declined to recognize the validity and effect of the agreement of May 23, 1929. This, also, was not an issue. The validity and effect of the agreement was likewise conceded by the Government at the trial. (23 F. Supp. 276, column 1.)

This apparent endeavor by plaintiff to violate Rule 52(a) and at the same time to conceal, by findings and conclusions, the real issues here decided, is not due to a lack of skill in draftsmanship.

Omissions under First Issue:

The decision upon the First issue above will not be clear or complete in form, and will not comply with Rule 52(a), unless the trial Court makes findings or conclusions, either affirmative or negative, upon the following litigated questions:

1. Whether the "community interest" in property given in 1929 to the surviving donee was an interest created by statute, an interest protected against in-

vasion during marriage, and an interest intended to aid in the protection of widows, grass widows and their children against want?

2. Whether the California Legislature, immediately before enacting chapter 103 of the laws of 1850 relating to marital property, considered and compared the merits and demerits of the common and civil law types of widows' estates; whether it finally and on April 13, 1850, chose a modified civil law or community type instead of the common law or dower type; and whether by statute, and at the same time, it expressly rejected dower? [53]

3. Whether historically, functionally and in the method of its creation, the community property interest of the decedent's widow resembles in any particulars the marital property interests of surviving wives in the other states of the Union, and, if so, findings as to each such likeness; whether such interest is an incident of marriage; whether the property to which such interest of the wife attached resembles in any particulars that to which attaches the interest of surviving wives in the other states of the Union, and, if so, findings as to each such likeness; whether such interest ripened into an estate absolute upon her husband's death; whether by last will and testament decedent could have put the widow to an election between taking such interest or taking under his will; whether such interest became a part of decedent's probate estate; whether immediately upon her husband's death such interest became a fixed estate in specific property

or attached only to the residue; and whether such interest was ascertainable and distributable only by a court of probate administering the decedent's estate?

4. Whether the words "in lieu of", as used in Section 302(b) of the Revenue Act of 1926, mean "instead of"?

5. Whether the value of the property here involved, to the extent of the marital interest therein given to the widow in 1929, was at the time of decedent's death exactly one-half of the whole value of the property?

#### Omissions under Second Issue:

The decision upon the Second issue above will not be clear or complete in form, and will not comply with Rule 52(a), unless the trial Court makes findings or conclusions, either affirmative or negative, upon the following litigated questions:

1. Whether the agreement of 1929 was entered into by the parties for the purpose of reducing Federal income taxes?

2. Whether, in and by such 1929 agreement or at any time before [54] his death, the decedent transferred and completely relinquished to the donee all his rights and powers of disposition, possession, enjoyment, dominion, management and control of the property or interest therein transferred to the donee; and, if not, whether such rights and powers of the donor ceased, and then vested in the donee for the first time, upon and by virtue of the donor's death?

3. Whether, in and by the 1929 agreement or at any time before the donor's death, all of the economic benefits arising from ownership of the subject matter of the gift were transferred and completely relinquished to the donee; and, if not, whether all such economic benefits of the donor ceased, and then vested in the donee for the first time, upon and by virtue of the donor's death?

4. Whether, in and by such 1929 agreement or at any time before the donor's death, there was transferred from him to the donee the legal burdens and obligations incident to the ownership of the transferred property and interest; and, if not, whether such legal burdens and obligations of the donor ceased, and were then imposed upon the donee for the first time, upon and by virtue of the donor's death?

5. Whether the property or the interest therein transferred to the wife in 1929 would have become a part of her probate estate had she predeceased the donor intestate?

6. Whether the property or the interest therein transferred to the wife in 1929 would have reverted to decedent had the donee predeceased him intestate; and, if so, whether such possibility of reverter ceased or was relinquished upon and by virtue of the donor's death?

7. Whether the property or the interest therein transferred to the wife was subject to execution for her debts or obligations at any time before the donor's death; if not, whether it became subject to the donee's debts and obligations for the first time

upon and by virtue of the donor's death; whether the property or interest therein [55] transferred to the wife was subject, both before and after the donor's death, to execution for his personal debts and obligations contracted either before or after the transfer; and whether such property or transferred interest was subject after the donor's death to administration expenses and a family allowance?

8. Whether, after the 1929 gift, the donor was still vested until his death with the exclusive legal right and power to discharge his personal debts and obligations out of the transferred property and out of the donee's interest therein, without the consent or knowledge of the donee.

9. Whether, in and by the 1929 agreement, the value, at the time of his death, of the decedent's interests, rights and powers in, to and over the subject matter of the gift was reduced to any extent or degree; and, if so, the amount of such reduction.

10. Whether, to the extent of the Federal income tax savings, the donor was richer after the 1929 gift than before?

11. Whether, in managing and controlling the property and the donee's interest therein after the transfer, decedent occupied the relationship of a common law or statutory agent, trustee or co-partner of or for the donee; whether, in managing and controlling the property and the transferred interest therein after the gift, decedent owed the donee, as principal, beneficiary, co-partner or otherwise, any of the legal duties or obligations, and whether there were imposed upon him any of the legal liabilities,

of a common law or statutory agent, trustee or co-partner; and whether, in managing and controlling the property and the transferred interest therein after the transfer, the decedent enjoyed the legal freedom from personal liability to third persons which is enjoyed by common law and statutory agents, trustees and partners?

12. Whether the 1929 gift was intended to take effect "in possession or enjoyment" at or after the donor's death, within the [56] meaning of Section 302(c) of the Revenue Act of 1926?

Omissions under Third Issue:

The decision upon the Third issue above will not be clear or complete in form, and will not comply with Rule 52(a), unless the trial Court makes findings or conclusions, either affirmative or negative, upon the following litigated questions:

1. Whether, at the time of his death, decedent had the following powers over and in respect of the property to which the transferred interest attached, and whether such powers were legally exercisable by him alone and without the donee's consent, to wit:

(a) The power to use, possess and enjoy the property?

(b) The power to incur and contract debts on the credit of the property either below or in excess of the total value thereof?

(c) The power to sell, mortgage and pledge, to lease for any period of time, and to otherwise deal with and contract respecting, the personal property?

(d) The power by will to confer upon his executor

the power to sell and transfer specific property, both real and personal, in discharge of his personal debts?

(e) The power to lose, break or demolish the personal property and any improvements upon the real property?

(f) The power to waste, squander, speculate with and completely dissipate the personal property and the income from both the real and the personal property in riotous living?

(g) The power to lease or rent the real property [57] for successive periods of one year, or from month to month, without limitation, and to deliver possession and enjoyment of the land to the lessee?

2. Whether, at the time of his death, the decedent had the following additional powers over and in respect of the property to which the transferred interest attached, and whether such powers were legally exercisable by him with the consent of the donee, to wit:

(a) The power to make gifts of the property, real or personal.

(b) The power to sell and mortgage the real property and to lease the same for periods longer than one year?

3. If at the time of his death the decedent possessed any of the foregoing powers over and in respect of the property, whether his exercise thereof before death could have lessened, destroyed, increased or otherwise changed the donee's enjoyment of the interest transferred to her?

4. If at the time of his death the decedent possessed any of the foregoing powers over or in re-



spect of the property, whether his exercise thereof before death could have altered, amended or revoked the 1929 transfer, or could have altered, amended or revoked the donee's enjoyment of her transferred interest?

5. If at the time of his death the decedent possessed any of the foregoing powers, whether the enjoyment of the transferred interest was then subject to any change through the exercise of a power to alter, amend or revoke, within the meaning of Section 302(d) of the Revenue Act of 1926?

Dated: August 8, 1942.

Respectfully submitted,

WM. FLEET PALMER,

United States Attorney

E. H. MITCHELL,

Assistant United States

Attorney

By E. H. MITCHELL

Assistant United States

Attorney,

Attorneys for Defendant.

[Endorsed]: Filed Aug 8, 1942. [58]

[Title of District Court and Cause.]

NOTICE OF MOTION FOR LEAVE TO FILE  
AMENDED ANSWER TO ORIGINAL COM-  
PLAINT (R.C.P., Rule 15(b))

To: Above-Named Plaintiff, and to Frank Mergen-  
thaler, Esq., her attorney:

You and Each of You Will Please Take Notice that the defendant will move the Court for leave to file an Amended Answer to the Original Complaint, a copy of which is attached hereto and made a part hereof, at the hour of 10:00 o'clock A. M. on Monday, the 14th day of September, 1942, or as soon thereafter as counsel can be heard, in Courtroom No. 3, before the Honorable Ralph E. Jenney, in the Post Office and Court House Building on Spring and Temple Streets in the City of Los Angeles, California.

Said motion will be made pursuant to Rule 15(b) upon all of the [59] pleadings, briefs and opinions filed in this case, upon all Stipulations of Fact and the Reporter's Transcript herein, upon all orders made herein by the Court, upon the points and authorities hereto attached and the grounds therein set forth.

Dated: September 2, 1942.

WM. FLEET PALMER,  
United States Attorney.  
E. H. MITCHELL,  
Assistant United States  
Attorney.

EUGENE HARPOLE,

Special Assistant to the Chief  
Counsel, Bureau of Internal  
Revenue.

By E. H. MITCHELL

Attorneys for Defendant.

[Endorsed]: Filed Sep. 5, 1942. [60]

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[Title of District Court and Cause.]

AMENDED ANSWER TO ORIGINAL  
COMPLAINT

Comes Now, the defendant in the above-entitled action, leave of Court first had and obtained, and files this her amended answer to plaintiff's original complaint.

Defendant admits, denies and alleges:

I.

Admits the allegations contained in Paragraphs I, II, III, IV, V, VI and X of plaintiff's original complaint.

II.

In answer to Paragraph VII thereof, defendant admits that the [61] order of distribution referred to was made and entered on or about the date named; admits that said order of distribution was made under the will of the decedent; and admits that by such other property of the decedent was distributed to his widow under the terms of his will.

In that connection defendant alleges that the widow accepted such distribution under the terms of said

will; that all the property so distributed to her was, at the time of decedent's death, California community property of the type acquired after July 29, 1927 (hereinafter, for convenience, referred to as "new type community"); that the widow would have succeeded to the same property which was distributed to her had decedent not left a will; but that plaintiff, as decedent's widow, elected to take under said will.

Further answering the same Paragraph VII, defendant denies that either "all" of the property of the decedent or "all" of the property of the community was distributed to the surviving widow under the terms of the will or otherwise. In that connection defendant alleges that decedent owned no California separate property at the time of his death; that all of the property that became subject to administration in his probate estate was new type community property, and was all traceable solely to his personal earnings; that all thereof then stood, and continuously from the time of its acquisition had stood, of record in his sole name; that all became a part of his probate estate; and that there was distributed to the surviving widow under said order of distribution, only the residue thereof which remained after the discharge by the executrix of decedent's debts and obligations and the expenses of administering his estate.

### III.

In answer to Paragraph VIII, defendant Admits that on or about the date alleged the

plaintiff filed a Federal estate tax return on behalf of decedent's estate, reporting therein a net taxable estate of \$237,136.21; that upon audit of Bureau of Internal Revenue determined the net taxable estate to be \$294,606.15 [62] and the tax thereon, \$2,316.16; that on account of said tax there was paid by the executrix the amounts alleged in said paragraph upon the dates set forth therein; and that in and by the agreement of May 23, 1929, decedent's wife acquired a California wife's community interest in the properties upon which the instrument operated;

Alleges that decedent's object and purpose in executing said agreement was to minimize Federal taxes; and that, to the extent of his subsequent income tax savings, decedent was richer after the agreement than before;

Admits that said agreement was not made by decedent in contemplation of death, except insofar as his California separate property was thereby transformed into a type of marital property having as its fundamental purpose the partial protection of widows and grass widows against economic want;

Admits that said agreement was valid and effective and that it operated upon the decedent's separate property, upon the spouses' joint tenancy property, and upon the California community property of the type acquired prior to July 29, 1927 (hereinafter, for convenience, referred to as "old type community"); and admits that the Bureau included in the gross estate of the decedent the value of the one-half interest which plaintiff claims and alleges

was vested in her at the time of her husband's death, and computed the estate tax upon the value of all, rather than upon the value of but one-half, of the properties; and

Denies each and every other allegation in Paragraph VIII contained.

#### IV.

In answer to Paragraph IX thereof, defendant admits that on or about the date named the plaintiff filed with the Collector a written claim for the refund of \$1,429.90; and admits that Exhibit "A" attached to plaintiff's original complaint is a true and correct copy of such claim; and [63]

Defendant denies each and every other allegation in said Paragraph IX contained.

#### V.

Denies the allegations contained in Paragraph XI of plaintiff's original complaint.

#### VI.

In answer to Paragraph XII thereof, defendant denies that plaintiff is justly or otherwise entitled to the amount claimed by her, or to any other amount, and denies that there is no just credit or offset against said claim.

Further answering plaintiff's original complaint, defendant alleges:

#### VII.

(a) That in and by the agreement of May 23, 1929, decedent then made a transfer to his wife,

by way of gift, of an interest in his separate properties and in the old type community properties; that said transfer was not, and did not constitute, a bona fide sale for an adequate consideration, or a full consideration, or any consideration, in money or money's worth; and that said transfer was intended to take effect both in possession and in enjoyment at or after the donor's death, within the meaning of Section 302(c) of the Revenue Act of 1926, as hereinafter alleged;

(b) That in and by said instrument of transfer the donor expressly retained the full and exclusive right and power to manage and control all of the properties to which such transferred interest attached, including both the corpus and the income therefrom;

(c) That in and by such instrument the donor retained the full and exclusive dominion over, and the full and exclusive right and power to use, to possess, and to enjoy all of the properties to which such transferred interest attached, including both the corpus and the income therefrom, and to dispose of all thereof for an adequate or [64] inadequate consideration;

(d) That in and by such instrument the donor retained all of the economic benefits, and all of the incidents of ownership, of the properties to which the transferred interest attached, both corpus and income, including, in addition to the foregoing, the following full and exclusive rights and powers, to wit:

(1) To contract and incur personal debts and

personal obligations on the credit of such corpus and income,

(2) To discharge his personal debts and personal obligations out of such corpus and income,

(3) To subject such corpus and income to the discharge, both before and after his death, of his personal debts, personal obligations and the expenses of administering his estate, including a widow's allowance,

(4) To mortgage, pledge, lease, invest, re-invest, and to speculate and otherwise deal with and contract respecting, both the corpus and income of said personal properties and the income from the real properties, and

(5) To lease or rent the real properties for successive periods of one year, and from month to month, without limitation, and to deliver possession and use thereof to the lessee;

(e) That in and by such instrument the donor personally retained all of the ordinary burdens and obligations of ownership of the properties to which the transferred interest attached;

(f) That all of the foregoing rights and powers, so retained by the donor, were exercisable without the donee's knowledge or consent and without accountability to her, were exercisable by him in his unlimited discretion and without liability to her for acts of misfeasance or nonfeasance, and were exercisable by him in the form and mode of a full owner of the properties to which such transferred interest attached; that in the exercise of such re-



tained rights and [65] powers, the donor did not occupy toward the donee the relationship of a common law or statutory agent, trustee or co-partner; that in exercising such retained rights and powers, the donor owed the donee none of the duties or obligations, and there were imposed upon him in favor of the donee none of the liabilities, of a common law or statutory agent, trustee or co-partner; and that in exercising such retained rights and powers, the donor did not enjoy the freedom from liability to third persons which is enjoyed by common law and statutory agents, trustees and co-partners;

(g) That none of the foregoing rights, powers and economic benefits, so retained by the donor, were relinquished in whole or in part prior to his death; that all thereof ceased, and vested in the donee for the first time, upon and solely by virtue of his death and the distribution of his estate; that no part or portion of the burdens or obligations so retained by the donor was relinquished or transferred by him prior to his death; and that all thereof ceased, and were imposed upon the donee for the first time, upon and solely by virtue of the donor's death;

(h) That the donee's interest was so transferred to her

(1) That none thereof, and none of the properties to which it attached, or the income therefrom, could have become a part of her probate estate had she predeceased the donor intestate, and

(2) That none thereof, or of the income therefrom, could ever have become subject to execution for her debts or obligations either before or after her prior death, or during the harmonious marriage of the spouses; and

(i) That in and by such instrument of transfer the indefeasible passing of the gift was dependent upon contingencies which were terminable by the donor's death; that in and by such instrument of transfer the donor also retained the right to a possible return of the gift upon the prior death of the donee intestate; that such retained [66] right ceased upon and because of the donor's death; and that his death brought the gift into enjoyment by the donee.

### VIII.

In the alternative, the defendant alleges:

(a) That in and by said agreement the enjoyment of the interest thereby transferred was subject at the date of the donor's death to changes through the exercise by him, both alone and in conjunction with the donee, of numerous powers to alter, amend and revoke, within the meaning of Section 302(d) of the Revenue Act of 1926, as hereinbefore and hereinafter alleged.

(b) That all of the donor's powers alleged and set forth in the foregoing Paragraph VII of this amended answer were exercisable by him alone and without the donee's knowledge or consent, and without liability or accountability to her, continuously from the time of the gift until the moment of his death.

(c) That in and by the instrument of transfer the donor also retained continuously until the moment of his death the full, exclusive and exercisable power to lose, break and demolish the tangible personal properties and any improvements upon the real properties to which the donee's interest attached, without liability or accountability to her therefor.

(d) That in and by such instrument the donor also retained continuously until the moment of his death the full, exclusive and exercisable power to waste, squander, speculate with and completely dissipate the personal properties to which the transferred interest attached, as well as the income therefrom, together with the income from the real properties to which such interest attached, without liability or accountability to the donee therefor.

(e) That in and by such instrument the donor also retained continuously until the moment of his death the full, exclusive and exercisable power by will to confer upon his executor the full power to sell and transfer any one or more of the specific real and personal [67] properties to which the donee's interest attached, for the purpose of discharging his personal debts and obligations.

(f) That in and by such instrument the donor also retained continuously until the moment of his death the powers, exercisable with the consent of the donee.

(1) to make gifts of the properties, both real and personal, to which the transferred interest attached, and

(2) to sell and mortgage the real properties to which such interest attached, and to lease the same for periods longer than one year.

(g) That the exercise by the donor of any of the foregoing powers would have lessened, augmented or otherwise changed and altered the donee's enjoyment of the interest transferred to her.

(h) That the exercise by the donor of any one or more of the following powers would have completely divested the donee of her transferred interest in one or more or all of the properties to which it attached, to wit:

(1) The power to sell the tangible personal properties, and to dissipate the same and the income therefrom, either intentionally or unintentionally, by use, destruction, pledge and mortgage, and by payment of his personal debts and obligations therewith and with the proceeds of any sale, mortgage or pledge thereof;

(2) The power to sell both the tangible and intangible personal properties, and to dissipate the same and the income therefrom, either intentionally or unintentionally, by unsuccessful investment, speculation, pledge and mortgage, and by the payment of his personal debts and obligations therewith and with the proceeds of any sale, mortgage or pledge thereof; and

(3) The power to contract and incur personal debts and obligations amounting to a sum in excess of the value of all the properties to which the donee's interest attached, both real [68] and personal, with

resulting execution sales, bankruptcy or death insolvent.

(i) That in and by such instrument of transfer the indefeasible passing of the gift was dependent upon contingencies which were terminable by, and which terminated upon, the donor's death.

### IX.

In the alternative, the defendant alleges:

Defendant realleges and incorporates herein by reference each and all of the allegations contained in Paragraphs VII and VIII hereof, the same as though set forth herein in full.

That all the property, the value of which was included by the Commissioner in decedent's gross estate for estate tax purposes, was community property of the California type, and was traceable solely to decedent's personal earnings and his separate property; and that the widow's community interest therein was an interest therein of a surviving spouse, existing at the time of the decedent's death, within the meaning of Section 302(b) of the Revenue Act of 1926.

That during marriage plaintiff's said interest was an interest protected to some extent against invasion, was an interest conferred by statute upon California wives, and was so conferred for the sole and fundamental purpose of protecting widows and grass widows to some extent against want; that this civil law or community system of marital property was created by statute; that this civil law type of widows'

and grass widows' estate was consciously and deliberately chosen in 1850 by the first session of the California Legislature in lieu of the common law or dower type of widows' estate; and that concurrently with such choice, the Legislature expressly rejected dower by statute.

That both during and after the death of decedent, most of the characteristics of plaintiff's said interest were identical with those of statutory and common law dower; that such interest was strictly an incident of marriage; that it attached to the same type of property to which dower attaches in other states of the Union; that, like dower, it [69] ripened into an estate absolute upon the death of decedent, subject only to the payment of his debts and expenses of administration; that by last will and testament decedent could, and did, put his widow to an election between taking such interest or of taking under his will; that upon his death and after the administration of his estate such interest, for the first time, became a fixed estate in specific property; that such interest was ascertainable and distributable only by a court of probate; that during marriage such interest was not transferable by her to third persons but was relinquishable, nor could she contract debts on the credit thereof or incur liabilities collectible therefrom; and that the value of such interest during marriage was far less than one-half the value of the properties to which it attached.

That the only powers exercisable by plaintiff, during her harmonious marriage to decedent, were

strictly protective and consisted exclusively of the following, to wit:

(1) The negative power to prevent decedent's transfer, mortgage or lease for periods longer than one year of the real estate to which her interest attached, by refusing to consent in writing thereto;

(2) The affirmative power, exercisable for only one year after the filing for record of such a transfer, mortgage or lease of real estate executed by decedent without her written consent, to avoid the same and cause the return thereof to decedent's possession;

(3) The negative power to prevent a gift by decedent of the personal property to which her interest attached, by refusing to consent in writing thereto; and

(4) The affirmative power to set aside gifts of both real and personal properties to which such interest attached, made by the decedent without her written consent, and transfers thereof made in fraud of such interest, and cause the return thereof to decedent's possession. [70]

That the words "in lieu of", as used in Section 302(b) of the Revenue Act of 1926, mean and were intended by Congress to mean "instead of".

## X.

In the alternative, the defendant alleges:

That all of the property, the value of which was included by the Commissioner of Internal Revenue in decedent's gross estate for estate tax purposes, was new type California community property, and

was all traceable either to decedent's personal earnings or to his separate property; and that the value so included was the value of the property to the extent of the interest therein of the decedent at the time of his death, within the meaning of Section 302(a) of the Revenue Act of 1926, and was likewise the full value of the property.

Defendant realleges and incorporates herein by reference each and all of the allegations concerning the rights and powers of the decedent in, to and over, and concerning those of the wife in respect of, such property during his lifetime, contained in Paragraphs VII, VIII and IX hereof, the same as though set forth herein in full.

That the wife's interest in such property at the time of decedent's death was not divestible by the Legislature but was divestible by decedent; that such interest of the wife was a property interest wholly unknown to the common law; and that the dominion and full control of, all of the economic benefits flowing from, and all of the incidents of ownership of, the property to which her interest attached, were vested exclusively in the decedent at the time of his death.

That the value of the wife's interest in such property at the time of decedent's death was but nominal, and is incapable of measurement by proof or formula; and that the Commissioner did not err in determining that such interest was valueless.



Wherefore, having fully answered, defendant prays that she be [71] hence dismissed with her costs in this behalf expended.

WM. FLEET PALMER,  
United States Attorney.

E. H. MITCHELL,  
Assistant United States At-  
torney.

EUGENE HARPOLE,  
Special Assistant to the Chief  
Counsel, Bureau of Internal  
Revenue.

By.....  
Attorneys for Defendant.

(Duly Verified.)

[Endorsed]: Filed Sep. 5, 1942. [72]

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At a stated term, to wit: The Sept. Term, A. D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 28th day of Sept. in the year of our Lord one thousand nine hundred and forty-two. Present:

The Honorable: Ralph E. Jenney, District Judge  
[Title of Cause.]

#### ORDER AMENDING FINDINGS

This cause coming on for hearing on motion of defendant for leave to file amended answer to the

original complaint, pursuant to notice of motion filed September 5, 1942, continued to this date; Frank Mergenthaler, Esq., appearing as counsel for the plaintiff; E. H. Mitchell, Assistant U. S. Attorney, appearing as counsel for the defendant:

Attorney Mitchell argues in behalf of the Government; the Court makes a statement of its views; and Attorney Mergenthaler makes a statement.

It is ordered that the motion of the defendant for leave to file amended answer be, and it is, denied, and the Court states that, if necessary, the answer may be deemed to be amended to meet the proof. It is further ordered that the findings be amended by adding the following, beginning on page 16:

The allegations of Paragraphs I, II, III, IV, V, VI, and VII of the complaint are true.

The allegations of Paragraph VIII of the complaint are true as modified by the recomputations on file.

The allegations of Paragraphs IX, X, XI, and XII are true.

The allegations of the supplemental complaint are true. [72½]

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[Title of District Court and Cause.]

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial on the 14th day of December, 1936, before the Court sitting without a jury, trial by jury having

been waived by written stipulation of the parties; plaintiff appearing by Frank Mergenthaler, Esquire, and the defendant appearing by Peirson M. Hall, United States Attorney for the Southern District of California, and Edward H. Mitchell, Assistant United States Attorney for said District, and evidence both oral and documentary, including written stipulations of facts, having been received and the Court having fully considered the same hereby makes the following special findings of fact:

### I.

The plaintiff is a resident of the County of Los Angeles, State of California, and the jurisdiction of this Court is dependent upon a Federal question in that the cause of action arises under the laws of the United States of America pertaining to the Internal Revenue, to-wit: the Revenue Act of 1926.

### II.

At the time of the collection from the plaintiff as [73] Executrix under the Will of the said W. O. Sampson, deceased, and the payments to the defendant of the Federal estate taxes hereinafter referred to, the defendant, Galen H. Welch, was the Collector of Internal Revenue in and for the Sixth Collection District of California, and maintained his office as such Collector in the City of Los Angeles, State of California. The said Galen H. Welch retired from his office as such Collector of Internal Revenue on or about the 30th day of June, 1933, and was not in office as such Collector at the time of the commencement of this action.

## III.

This action is brought against the defendant as an officer of the United States of America acting under and by virtue of the Revenue Act of 1926, and on account of acts done by the defendant under color of said office and of the Revenue Laws of the United States.

## IV.

Plaintiff and William O. Sampson were married in 1899 and established their residence in California in the year 1909. They lived together as husband and wife and resided in the State of California until Mr. Sampson's death on December 28, 1930. Mr. Sampson died on said last named date.

## V.

On or about the 21st day of December, 1931, the plaintiff, as Executrix under the Will of W. O. Sampson, deceased, filed with the defendant, as Collector of Internal Revenue for the Sixth Collection District of California, a return for Federal estate taxes upon the estate of the said W. O. Sampson, deceased. The return so filed disclosed a net taxable estate of \$237,136.21. Thereafter the Bureau of Internal Revenue audited the said tax return and made certain adjustments therein, claiming that the net estate subject to Federal estate taxes was \$294,606.15, upon which the Bureau of Internal Revenue asserted a net estate tax of \$2,316.16. [74] Between December 16, 1931, and December 28, 1932, the plaintiff, Mae H. Sampson, as Executrix under the Will of W. O. Sampson, deceased, paid to the

defendant, Galen H. Welch, as Collector of Internal Revenue for the Sixth Collection District of California, the following amounts upon account of said estate tax, said payments having been made upon the dates set opposite each amount:

Date of Payment	Amount Paid
December 16, 1931.....	\$ 1,197.09
December 23, 1932.....	223.81
December 28, 1932.....	254.21
	<hr/>
Total amount paid between said dates.....	\$ 1,675.11

VI.

Prior to her husband's death, and on the 23rd day of May, 1929, a written agreement was made, executed and delivered between plaintiff and said William O. Sampson. The following is a true and correct copy of said agreement between the plaintiff and the said decedent, William O. Sampson:

This Agreement, made this 23rd day of May, 1929, between William O. Sampson, first party, and Mae Sampson, second party, both residing at Los Angeles, California,

Witnesseth: Whereas, the parties hereto inter-married on or about October 3, 1899, and since that time have been and now are husband and wife and living together as such; and

Whereas, said parties, since the date of their marriage have acquired certain property which, by virtue of the laws of the State of California and/or written agreement between the parties hereto, is the community property of the parties hereto; and the parties hereto are desirous that the rights and

interests of the re- [75] spective parties hereto in and to all their community property be expressly defined and established in accordance with the terms and provisions hereof;

Now Therefore, in consideration of the love and affection which each of the parties hereto bears unto the other and of other good and valuable consideration, moving from each of the parties unto the other, it is hereby agreed as follows:—

1. That all property now owned by the first party shall be and the same is hereby declared to be community property of the parties hereto.

2. That the respective interests of the parties hereto in their community property during the continuance of the marriage relation are and shall be present, existing and equal interests under the management and control of the husband, first party hereto, as is provided in Sections 172 and 172 (a) of the Civil Code of the State of California.

3. That this agreement is intended and shall be construed as defining the respective interests and rights of the parties hereto in and to all community property, and the rents, issues and profits thereof, heretofore or hereafter acquired by the parties hereto during the continuance of said marriage relation.

First party does hereby assign, transfer and convey unto second party such right, title and interest in and to said community property as may be necessary to carry into full force and effect the terms of this instrument.

In Witness Whereof the parties hereto have hereunto set their hands the day and year first above written.

WILLIAM O. SAMPSON  
MAE SAMPSON [76]

VII.

On or about the 24th day of November, 1933, the plaintiff filed with the Collector of Internal Revenue at Los Angeles, California, a written claim for refund of the Federal estate tax so assessed and collected by the defendant from the plaintiff as Executrix under the Will of W. O. Sampson, deceased. The basis of the claim for refund was that the Commissioner of Internal Revenue erroneously included in the gross taxable estate of W. O. Sampson, deceased, the interest in the property claimed to have been acquired by the plaintiff, Mae H. Sampson, under the terms and provisions of the said agreement dated May 23, 1929.

VIII.

Thereafter, to-wit, on or about the 13th day of July, 1934, the Commissioner of Internal Revenue, by his duly authorized deputy, in writing notified the plaintiff Mae H. Sampson, as Executrix under the Will of W. O. Sampson, deceased, that the said claim for refund so filed by her as aforesaid was rejected in its entirety.

IX.

That no part of the sums so paid by the plaintiff Mae H. Sampson, as Executrix of the estate of W.

O. Sampson, deceased, to the defendant as hereinbefore set forth has been paid, refunded or credited, and that there is no offset against the claim of the plaintiff herein for a refund of the same.

## X.

No action upon the claim for refund hereinbefore referred to, other than as herein set forth, has been taken before Congress or before any of the Departments of the Government of the United States, and that no action has been brought upon said claim for refund except the present action.

## XI.

The total gross estate upon which the United States [77] Bureau of Internal Revenue computed the estate tax upon the estate of W. O. Sampson was \$493,109.15, which said value was fixed as of December 28, 1930, the date of the death of said W. O. Sampson. This amount is made up as follows:

Real Estate, all of which is situate in the State of California .....	\$ 32,842.46
Real estate, all of which is situate in the State of California, held in joint tenancy by the decedent and the plaintiff, Mae H. Sampson	35,532.88
Corporate Common and Preferred stocks evidenced by certificates.....	312,273.88
Corporate bonds payable to bearer with interest accrued to December 28, 1930.....	8,974.90
Unsecured negotiable promissory notes with accrued interest thereon and checks payable to W. O. Sampson.....	25,959.91
Life Insurance payable to the plaintiff, Mae H. Sampson .....	\$109,331.88
Less amount exempt under Section	



302(g) of the Revenue Act of 1926	40,000.00	
		69,331.88
Salary (bonus) accrued at the date of decedent's death .....		6,213.24
Household furniture and automobile.....		1,980.00
		\$493,109.15
Total Gross Estate.....\$493,109.15		

The said sum of \$493,109.15 includes the one-half interest in the property claimed by the plaintiff, Mae H. Sampson under and by virtue of the terms of the said alleged agreement dated May 23, 1929, hereinbefore referred to. The Bureau allowed deductions in the sum of \$198,503, leaving a net taxable estate amounting to \$294,606.15, upon which latter sum a total tax, after deducting a credit for California inheritance tax paid, in the sum of \$2,316.16, was computed and assessed.

## XII.

Of the property included in the gross estate by the Commissioner of Internal Revenue in computing such Federal estate tax, the following property acquired by decedent prior to July 29, 1927, was community or separate property at the time of its [78] acquisition; the community property having been acquired with funds earned by him before said date:

## SEPARATE OR COMMUNITY PROPERTY ACQUIRED BEFORE JULY 29, 1927

Reported on Fed. Est. Tax Return	Asset	Date Acquired	How Acquired	Commissioner's Final Valuation
Schedule Item				
A 1	Real Est. 901-3 E. 9th St., Los Angeles....	5-1 -24	By Purch.	12,842.46
A 2	Real Est. 213 N. Norton Ave. Los Angeles	5-1923	By Purch.	20,000.00
B 1	3857.5 Shares—Bullock's .....	6-15-22	By Gift	92,580.00
B 1	7292.5 Shares—Bullock's .....	9-1925	By Purch.	175,020.00
B 21	100 Shares—Bullock's .....	6-16-22	By Gift	10,000.00
B 34	\$100 L. A. Union Term. Bond.....	3-1924	By Purch.	110.50
B 35	\$1000 Miller & Lux 7%.....	12-16-25	By Purch.	887.11
B 37	\$2000 Oakmont Country Club, 6% Bond..	3- 1-23	By Purch.	1,004.50
B 38	\$1000 Pacific S.S. Co. 6½% Bond.....	1-30-25	By Purch.	350.00
B 39	\$1000 Pacific Palisades Assn., 6½% Bond	3- 9-27	By Purch.	1,005.90
C 1	Note of John G. Bullock.....	5-11-27	By Purch.	12,883.33
" 2	Note of P. G. Winnett.....	5-11-27	By Purch.	12,883.33
" 16	Life Ins. Pol.—Penn Mutual Life Ins. Co. #1114796 .....	5- 5-24	By Purch.	3,011.91

Separate or Community Property Acquired Before July 29, 1927—(Continued)

Reported on Fed. Est. Tax Return	Schedule Item	Asset	Date Acquired	How Acquired	Commissioner's Final Valuation
C 17	Life Ins. Pol.—Union Central Life Ins.				
	Co. #745121		1-13-23	By Purch.	3,260.07
" 18	Life Ins. Pol.—Provident Mutual Life Ins.				
	Co. #406,409		5- 4-22	By Purch.	5,347.87
C 19	Life Ins. Pol.—Provident Mutual Life Ins.				
	Co. #424100		1-15-23	By Purch.	3,309.47
" 20	Life Ins. Pol.—Provident Mutual Life Ins.				
	Co. #461463		5- 3-24	By Purch.	3,032.65
" 21	Life Ins. Pol.—Provident Mutual Life Ins.				
	Co. #505528		11-17-25	By Purch.	2,204.82
" 24	Life Ins. Pol.—Provident Mutual Life Ins.				
	Co. #276752		5- 4-17	By Purch.	6,898.42
D-2 1	Household Goods	Prior to	7-29-27	By Purch.	900.00
" 2	Household Goods	Prior to	7-29-27	By Purch.	80.00
	Bank Account—Omitted in Return, Added by Revenue Agent's Report.....			Community	46.57
					<u>\$367,658.91</u>

All of the foregoing was community property except Items B-1 and B-21, which two latter items of Bullock's stock were the separate property of decedent acquired by gift, at the time of acquisition. [79]

The two parcels of real estate listed above were, at the time of their purchase, deeded to plaintiff's husband, W. O. Sampson, and continuously thereafter stood of record in his sole name until after his death. The bonds referred to above were payable to bearer and, at the time of their purchase, were delivered to plaintiff's said husband. Each of the two promissory notes referred to above was drawn to the sole order of plaintiff's said husband, and neither was endorsed by him during his lifetime. The life insurance items referred to above represent the proportions of the proceeds of each of the seven listed policies attributable to premiums earned and paid by plaintiff's said husband prior to July 29, 1927. These policies were all payable to plaintiff as beneficiary.

The certificates representing the two items of Bullock's stock (Items B-1 and B-21) were, at the time of their said acquisition, issued to, and in the sole name of, plaintiff's said husband and, continuously thereafter until a date subsequent to his death, stood in his sole name.

The last item above (D-2-2), consisting of cash in the sum of \$46.57, was earned by decedent prior to July 29, 1927.

By said agreement of May 23, 1929, the parties

transferred all of the said community property of the parties and said husband's said separate property (described and referred to in this finding XII) into community property of the spouses of the type acquired by California married persons after July 29, 1927; and Mr. Sampson transferred to plaintiff such an interest in all such community and separate property as would have accrued to plaintiff under the community property laws of California, including the provisions of Section 161a of the California Civil Code, had such property been purchased with funds earned in California by the community after July 29, 1927. [80]

## XIII.

Of the property included by the Commissioner in the gross estate in computing such tax, the following property was acquired by purchase by plaintiff's said husband before May 23, 1929, with funds earned by him after July 29, 1927:

Property	Valuation
5 Shares Dilfer Bond & Mtg. Co., Common.....	\$ 450.00
5 Shares Dilfer Bond & Mtg. Co., Common.....	450.00
10 Shares General Mills, No Par Common.....	461.25
15 Shares Pac. Amer. Fire Ins. Co., Common.....	375.00
20 Shares Van de Kamp's Holland-Dutch Bakers	600.00
200 Shares Bullock's, Inc. Pref.....	20,000.00
5 Shares Van de Kamp's Holland-Dutch Bakers	425.00
\$1000 Bullock's 6%, 1947 Gold Bonds.....	994.60
\$1000 Chicago Great Western Ry., 4% Bond.....	658.11
\$1000 Home Service Co., 6½% 1942 Bond.....	985.90
Packard Motor Car.....	1,000.00

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Aggregate \$26,399.86

All of the certificates evidencing the shares of stock just listed were, at the time of their purchase, issued to and in the sole name of plaintiff's said husband and, continuously thereafter, stood in his sole name until after his death. The bonds just listed were payable to bearer and at the time of their acquisition were purchased by and delivered to plaintiff's said husband.

The above property listed in this Finding XIII was, at the time of its acquisition, community property of the spouses of the type acquired by California married persons after July 29, 1927. [81]

#### XIV.

Of the property included by the Commissioner in the gross estate in computing such tax, the following property was acquired by purchase by plaintiff's said husband before his death with funds earned by him after May 23, 1929, the date of execution of said agreement:

Property	Valuation
15 Shares America Safety Razor Corp., No par com. ....	\$ 840.00
15 Shares Caterpillar Tractor Co., no par common .....	384.37
5 Shares Caterpillar Tractor Co., no par common .....	128.13
10 Shares Caterpillar Tractor Co., no par common .....	256.25
50 Shares Citizens Nat'l. Tr. & Sav. Bank, common .....	4,000.00
10 Shares Columbia Gas & Electric Co., common	327.50
2 Shares Columbia Oil & Gasoline Co., common	9.25
50 Shares Curtis Wright Corp., no par common	112.50
10 Shares General Foods Corp., no par common	472.25
12 Shares General Motors Corp., common.....	409.50

Property	Valuation
10 Shares Nat'l Dairy Prod. Corp. no par common .....	\$ 373.75
25 Shares Packard Motor Corp., no par common .....	209.38
12 Shares Phillips Petroleum Co., no par common .....	156.00
12 Shares Taylor Milling Corp., no par common .....	234.00
20 Shares Union Oil Co. of Calif., common.....	422.50
10 Shares Van de Kamp's Holland Dutch Bakers, Inc. ....	300.00
10 Shares Walworth Co., no par common.....	112.25
10 Shares Commonwealth & Southern Corp.....	905.00
10 Shares Wm. Filene's Sons Co., Pref.....	905.00
12 Shares Gamewell Co.....	730.00
15 Shares Grand Union Co., convertible preferred .....	540.00
1 Share Van de Kamp's Holland Dutch Bakers, Pref. ....	85.00
\$1000 Caterpillar Tractor Co., 5%, 1935 Bond.....	962.22
	<b>[82]</b>
\$1000 Nat'l. Dairy Prod. Co. 1948 Bond.....	1,008.12
\$1000 Sinclair Cons. Oil Corp. 7% 1937 Bond.....	1,007.94
1930 Bonus—Bullock's .....	6,166.67
Aggregate of ten checks listed on Schedule C of Federal Estate Tax Return (plaintiff's Exhibit No. 2) being interest and dividends on the securities listed in this Finding.....	193.25
	<hr style="width: 20%; margin-left: auto; margin-right: 0;"/>
	\$ 21,250.83

All of the certificates evidencing the shares of stock just listed were, at the time of their purchase, issued to and in the sole name of plaintiff's said husband, and, continuously thereafter, stood in his sole name until after his death. The three bonds just listed were payable to bearer and at the time of their acquisition were purchased by and delivered to plaintiff's said husband. The 1930 bonus item, just listed, was compensation paid for services rendered his employer in 1930 by plaintiff's

said husband. The above property listed in this Finding XIV was, at the time of its acquisition, community property of the spouses of the type acquired by California married persons with funds earned after July 29, 1927.

## XV.

Of the property included by the Commissioner in the gross estate in computing such tax, the following was joint tenancy property of said spouses:

Property	Valuation
Real Estate 907-9 East 9th Street, Los Angeles.....	\$ 18,000.00
Real Estate—4242-4242½ Normal Ave., Los Angeles	8,000.00
Real Estate—Lot 59, Tr. 1971, Los Angeles Co.....	600.00
Bank Account—Citizens National Tr. & Sav. Bank	828.78
Bank Account—Citizens National Tr. & Sav. Bank	144.50
Bank Account—Citizens National Tr. & Sav. Bank	7,253.83
Fidelity Sav. & Loan Assn. Certificates.....	516.32
Savings Account—First National Bank of Los Angeles .....	189.45

Aggregate \$35,532.88

[83]

Each of the three parcels of joint tenancy real estate referred to above was acquired prior to July 29, 1927, with funds earned by decedent prior to said date. \$828.78 of said bank account with Citizens National Trust and Savings Bank of Los Angeles represented funds earned and deposited by plaintiff's said husband prior to July 29, 1927. \$144.50 thereof represented funds earned and deposited by plaintiff's said husband between July 29, 1927, and May 23, 1929. \$7,253.83 thereof represented funds earned and deposited by plaintiff's said husband after May 23, 1929, and before his



death. The said Fidelity Savings and Loan Association certificate was purchased by plaintiff's said husband with funds earned by him after July 29, 1927. Said First National Bank savings account represented funds earned and deposited by plaintiff's said husband prior to January 1, 1924.

XVI.

Of the property included by the Commissioner in the gross estate in computing said tax, the following represents the proportions of the proceeds of life insurance policies attributable to premiums earned and paid by plaintiff's said husband after July 29, 1927:

Policies	Valuation
Penn. Mutual Life Ins. Co. #1114796.....	\$ 2,027.70
Union Central Life Ins. Co. #745121.....	1,794.74
Provident Mutual Life Ins. Co. #406409.....	2,782.16
Provident Mutual Life Ins. Co. #424100.....	1,733.71
Provident Mutual Life Ins. Co. #461463.....	1,992.79
Provident Mutual Life Ins. Co. #505528.....	2,799.99
Provident Mutual Life Ins. Co. #577113.....	6,034.00
Provident Mutual Life Ins. Co. #582438.....	15,000.00
	<b>[84]</b>
Provident Mutual Life Ins. Co. #276752.....	3,101.58
New England Mutual Life Ins. Co. #614651.....	15,000.00
New England Mutual Life Ins. Co. #690423, Ac- quired 11-4-30 .....	10,000.00
New England Mutual Life Ins. Co. #690424, Ac- quired 11-4-30 .....	20,000.00
	<hr/>
	Aggregate \$82,266.67

The policies listed above were all payable to plaintiff individually as beneficiary.

## XVII.

(a) The values of the items of property listed in the foregoing Findings XII to XVI, inclusive, are the gross values finally fixed by the Commissioner in computing the estate tax upon decedent's estate. The total gross values of said items amount to \$533,109.15.

(b) In such final computation the Commissioner allowed the following exemptions and deductions as indicated in plaintiff's Exhibit No. 4 as follows:

Miscellaneous deductions .....	\$ 98,503.00
Specific exemption .....	100,000.00
Life insurance exemption .....	40,000.00
	<hr/>
Total.....	\$238,503.00

## XVIII.

At the time of making the agreement hereinbefore referred to, to-wit, on May 23, 1929, the decedent, W. O. Sampson, was in good health and at that time was Secretary and Treasurer of Bullock's. The decedent was actively engaged in business until November 15, 1930. He was taken ill on the 15th or 16th of November, 1930, and died of Lobar pneumonia on December 28, 1930. On November 4, 1930, the New England Mutual Life Insurance Company issued two policies of insurance upon the life of the decedent, one for \$10,000.00 and the other for \$20,000.00.

## XIX.

The agreement dated May 23, 1929, was not made in contemplation of death. [85]

XX.

That this suit is brought under Section 24 of the judicial code as amended. The amount sought to be recovered is less than \$10,000.00.

XXI.

Galen H. Welch, the defendant named in the original complaint in this cause, died on or about the 25th day of July, 1941, leaving a Last Will and Testament in writing.

XXII.

Said Last Will and Testament has been admitted to probate by the Superior Court of the State of California, in and for the County of Los Angeles.

XXIII.

Letters Testamentary upon the said Last Will and Testament of the said Galen H. Welch have been issued by said Superior Court to Josephine Welch Overton, the Executrix named in the said Will.

XXIV.

Said Josephine Welch Overton is now the duly appointed, qualified and acting Executrix of the Estate of said Galen H. Welch, deceased.

XXV.

Notice to creditors of the said Galen H. Welch was first published on August 29, 1941.

XXVI.

The plaintiff herein filed with the Clerk of said Superior Court her claim against said estate of

Galen H. Welch, deceased, in the sum of \$1,429.90 for Federal Estate Taxes, which the plaintiff herein claims were erroneously and illegally levied, assessed and collected upon the estate of the said W. O. Sampson, deceased, by the said Galen H. Welch, acting in his capacity as a Collector of Internal Revenue; the said claim being the [86] identical claim which is the subject matter of this action; said claim was so filed on February 4, 1942.

#### XXVII.

Under date of March 29, 1942, the said Josephine Welch Overton, as Executrix of the Estate of said Galen H. Welch, deceased, rejected the said claim in writing.

#### XXVIII.

The said Josephine Welch Overton, as Executrix of the estate of said Galen H. Welch, deceased, has been substituted as defendant in this action in the place and stead of the said Galen H. Welch, deceased.

#### XXIX.

The Bureau of Internal Revenue declined and refused to recognize the validity of said agreement dated May 23, 1929, and the effect thereof and included in the gross estate of the decedent, W. O. Sampson, the one-half interest belonging to the plaintiff, Mae H. Sampson, and computed the estate tax upon the interest of both W. O. Sampson and Mae H. Sampson in the property.

XXX.

The plaintiff is now and has been since the 23rd day of January, 1931, the duly appointed, qualified and acting Executrix of the Estate of W. O. Sampson, deceased, the said W. O. Sampson, the husband of said plaintiff having died testate a resident of Los Angeles County, State of California. The plaintiff was appointed Executrix of said estate by the Superior Court of the State of California, in and for the County of Los Angeles. [87]

Supplement to Findings of Fact in *Sampson v. Josephine Welch Overton*—No. 7317—Law.

XXXI.

The allegations of Paragraphs I, II, III, IV, V, VI and VII of the complaint are true.

The allegations of Paragraph VIII of the complaint are true as modified by the recomputations on file.

The allegations of Paragraphs IX, X, XI and XII are true.

The allegations of the supplemental complaint are true. [88]

CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the Court makes the following conclusions of law:

I.

The effect of the said agreement dated May 23, 1929, was to vest in the said Mae H. Sampson a present, existing, and equal interest in the prop-

erty of said W. O. Sampson as if the said property had been acquired from community earnings of the said W. O. Sampson earned subsequent to July 29, 1927.

## II.

The interest in the property of the decedent and his wife, plaintiff herein, so acquired under the said agreement of May 23, 1929, was such as to require the exclusion from the gross estate of the decedent subject to Federal Estate tax of one-half of all the property owned by the decedent and his wife at the date of the decedent's death.

## III.

The decedent's gross estate subject to Federal Estate tax was accordingly \$266,554.57.

## IV.

In determining the net estate for Federal Estate tax purposes the following deductions are allowable in their entirety as deductions from the value of the said gross estate:

Miscellaneous deductions as per plaintiff's	
Exhibit No. 4.....	\$ 76,503.00
Widow's allowance .....	22,000.00
Life Insurance exemption .....	40,000.00
Specific exemption .....	100,000.00
	<hr/>
Total deductions.....	\$238,503.00

## V.

The plaintiff is entitled to interest at the rate of six per cent (6%) per annum from the dates of payment of said Estate tax as follows: On the

sum of \$1,197.09 from December 16, 1931; on the sum of \$223.81 from December 23, 1932; on the sum [89] of \$198.11 from December 28, 1932.

VI.

The said agreement dated May 23, 1929, was not made in contemplation of death.

VII.

The plaintiff, as Executrix of the estate of W. O. Sampson, deceased, is entitled to judgment against the defendant herein in accordance with the Court's determination of the issues herein, said judgment to be entered pursuant to Rule 11 of this Court.

Approved and adopted this 7th day of October, 1942, with an exception allowed to the defendant.

RALPH E. JENNEY,

United States District Court  
Judge.

Approved as to form as required by Rule 8.

-----  
United States Attorney.

-----  
Assistant United States At-  
torney.

[Endorsed]: Lodged Aug. 5, 1942.

[Endorsed]: Filed Oct. 7, 1942. [90]

In the District Court of the United States in and for the Southern District of California, Central Division.

At Law No. 7317-RJ

MAE H. SAMPSON, individually and as Executrix under the Will of W. O. Sampson, Deceased,

Plaintiff,

vs.

JOSEPHINE WELCH OVERTON, as Executrix of the Estate of Galen H. Welch, Deceased, formerly Collector of Internal Revenue for the Sixth Collection District of California,

Defendant.

### JUDGMENT

The above entitled cause came on regularly for trial on the 14th day of December, 1936, before Hon. Albert Lee Stephens, Judge of the United States District Court for the Southern District of California, Central Division, sitting without a jury, a trial by jury having been expressly waived by written stipulation of the parties hereto, and the plaintiff appearing by her attorney, Frank Mergenthaler, Esq., and the defendant appearing by Peirson M. Hall, United States Attorney and E. H. Mitchell, Assistant United States Attorney; thereafter by stipulation of the parties, the said case was transferred to Hon. Ralph E. Jenney, Judge of the United States District Court for the Southern Dis-



trict of California, Central Division; thereafter by Minute Order of the Court made [91] May 18, 1938, the case was reopened for the limited purpose of taking evidence as to the date of the acquisition of certain stocks, bonds, household furniture, automobile and other personal property, and written stipulations of a portion of the evidence having been filed, and oral testimony and documentary evidence having been introduced; Galen H. Welch, the original defendant in this case, having died, Josephine Welch Overton as Executrix of the Estate of said Galen H. Welch was substituted in the place and stead of said Galen H. Welch and supplemental pleadings were filed setting up the appointment of said Josephine Welch Overton as such Executrix; and the case having been submitted for decision and the Court having filed herein its Findings of Fact and Conclusions of Law, whereby by reason of the law and the facts herein, it is

Ordered, Adjudged and Decreed that the plaintiff, Mae H. Sampson, individually, and as Executrix under the Will of W. O. Sampson, deceased, do have and recover of and from the defendant, Josephine Welch Overton, as Executrix of the Estate of Galen H. Welch, deceased, formerly Collector of Internal Revenue for the Sixth Collection District of California, the principal sum of \$1,466.11, together with the sum of \$634.02, being interest at the rate of 6% per annum on the sum of \$987.88, from December 21, 1931, to date; together with the sum of \$132.19, being interest at

the rate of 6% per annum on the sum of \$223.81, from October 28, 1932, to date; together with the sum of \$147.94, being interest at the rate of 6% per annum on the sum of \$254.42, from December 23, 1932, to date; the aggregate of said principal and interest being \$2,380.26; together with her costs of suit in the sum of \$23.50.

Dated: Los Angeles, California, October 7th, 1942.

RALPH E. JENNEY,

United States District Judge.

[92]

Approved as to form under Rule 8 this 6th day of October, 1942.

LEO V. SILVERSTEIN,

United States Attorney.

E. H. MITCHELL,

Assistant United States Attorney.

By E. H. MITCHELL,

Attorneys for Defendant.

Judgment entered Oct. 7, 1942. Docketed, Oct. 7, 1942. C. O. Book 11, Page 575. Edmund L. Smith, Clerk, by L. B. Figg, Deputy.

[Endorsed]: Filed Oct. 7, 1942. [93]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL  
(RULE 59a)

Comes now the defendant in the above-entitled action and moves that an order be entered herein granting her a new trial upon the following two issues only, to wit:

1st. Whether the 1929 gift by decedent to plaintiff of a California wife's new type community interest in his separate and old type community properties was intended to take effect in possession or enjoyment at or after his death, within the meaning of Section 302(c) of the Revenue Act of 1926; and

2d. Whether the enjoyment by the donee of such transferred interest was subject, at the time of the donor's death, to changes through the exercise by him, either [94] alone or in conjunction with the donee, of powers to alter, amend or revoke, within the meaning of Section 302(d) of the Revenue Act of 1926.

GROUND OF MOTION

This motion is made upon the following grounds:  
Grounds Based on Section 302(c) of the Act.

A. That in and by the 1929 instrument of transfer the indefeasible passing of the gift was dependent upon contingencies which were terminable by the donor's death, for the following reasons, to wit:—

1. In and by such instrument of transfer the donor retained, for the remainder of his life, the

right to a possible return of the properties, to which the transferred interest attached, upon the prior death of the donee intestate.

2. In and by such instrument no exercisable rights or powers, except protective, no economic benefits, and no incidents or attributes of ownership, were then transferred to the donee in respect of the properties to which her interest attached; none thereof vested to any extent in the donee until the donor's death; none thereof fully vested in the donee until the determination in probate of the distributable residue of such properties and until the distribution thereof; and then such rights, powers, economic benefits and incidents of ownership vested in the donee in respect of such residue only.

3. In and by such instrument the donee's interest was so transferred to her that none of such interest and none of the properties to which it attached, or the income therefrom, could have become a part of her probate estate had she predeceased the donor intestate; and none of such interest, properties or income could ever have become subject [95] to execution for her debts or obligations either before or after her prior death, or during the harmonious marriage of the spouses.

In and by such instrument of transfer the donor retained, for the remainder of his life, the following rights and powers over and in respect of the properties to which the transferred interest attached, which rights and powers were full and exclusive, were exercisable by him in his unlimited discretion,

in the form and mode of an owner, and without liability or accountability to the donee:

4. To dispose of such personal properties for an adequate or inadequate consideration:

5. To contract and incur, without limitation as to amounts, personal debts and personal obligations upon the credit of such properties, both real and personal, and both corpus and income; to discharge his personal debts and obligations out of such personal properties, both corpus and income; by will, to effectively cause the discharge of such debts and obligations out of any such specific real or personal properties after his death; and by death, testate or intestate, to subject said properties to the discharge of such debts and obligations, to the expenses of administering his estate, and to a family allowance.

B. That in and by the 1929 instrument of transfer the donor retained, for the remainder of his life, the right to the exclusive possession and enjoyment of the properties to which the donee's interest attached, in that he therein and thereby retained, for the remainder of his life, the incidents and attributes of ownership and the following rights and powers in, to, over and in respect of such properties, which rights and powers were full and exclusive, were exercisable by him in his unlimited discretion, in the form and mode of an owner, and without liability or accountability to the donee. These retained rights and [96] powers were in addition to those set forth in Ground A above:

1. To manage and control all of such properties, both real and personal, together with all income therefrom:

2. To use, possess and enjoy such properties, together with the income and all other economic benefits arising therefrom.

3. To lease or rent such personal properties without limitation as to time, and to lease and rent such real properties for successive periods of one year and from month to month, without limitation, and to deliver possession and use thereof to the lessee or tenant.

C. That none of the foregoing rights, powers and economic benefits was relinquished in whole or in part by decedent prior to this death.

D. That the donor's death and the administration and distribution of his probate estate brought the gift into enjoyment by the donee for the first time, and then only in respect of the residue thereof.

Grounds based on section 302(d) of the act.

E. That in and by such instrument the donor retained continuously until the moment of his death the following freely exercisable powers to change the donee's enjoyment of the interest transferred to her, and to partially or completely divest her of her said interest in respect of all or a portion of the properties to which it attached.

Powers exercisable by Donee alone

1. The powers described in the foregoing Paragraphs A-4, 5 and 6, and B-1, 2 and 3;

2. The power to lose, break and demolish the tangible [97] personal properties and any improvements upon the real properties to which the donee's interest attached;

3. The power to waste, squander and speculate with and (short of a pure gift) to completely dissipate such personal properties, both tangible and intangible, as well as the income from both the real and personal properties.

The foregoing powers, numbered "1" through "3", above, were so exercisable by the donor alone, without the knowledge or consent of the donee, and without accountability or liability to her therefor;

#### Powers exercisable in Conjunction with Donee

4. With the consent of the donee, the power to make gifts of such properties, both real and personal; and

5. With the consent of the donee, the power to sell and mortgage such real properties, and to lease the same for periods longer than one year.

The exercise by the donor, in his lifetime, of any one or more of the foregoing powers referred to in Grounds E-1 through 5, above, would have lessened, augmented or otherwise altered and changed the donee's enjoyment of the interest transferred to her.

#### Powers to Divest Exercisable alone

The exercise by the donor, in his lifetime, of any one or more of the following retained powers would have completely divested the donee of her trans-

ferred interest in one or more or all of the properties to which it attached, to wit:

6. The power to sell the tangible personal properties and to dissipate the same and the income therefrom, either intentionally or unintentionally, by use, destruction, pledge and mortgage, and by payment of his personal debts and obligations therewith and with the proceeds of any [98] sale, mortgage or pledge thereof;

7. The power to sell both the tangible and intangible personal properties, and to dissipate the same and the income therefrom, either intentionally or unintentionally, by unsuccessful investment, speculation, pledge and mortgage and by the payment of his personal debts and obligations therewith and with the proceeds of any sale, mortgage or pledge thereof; and

8. The power to contract and incur personal debts and obligations amounting to a sum in excess of the value of all the properties to which the donee's interest attached, both real and personal, with resulting execution sales, bankruptcy or death insolvent.

This motion is made pursuant to Rule 59(a) of the Rules of Civil Procedure, and upon the pleadings, all stipulations of fact, the reporter's transcript, all exhibits, all briefs, all court orders, and the findings and conclusions, on file in this case, and upon the points and authorities hereto attached and made a part hereof.



Dated: October 16, 1942.

LEO V. SILVERSTEIN,  
United States Attorney.

E. H. MITCHELL,  
Assistant United States At-  
torney.

By E. H. MITCHELL  
Attorneys for Defendant.

[Endorsed]: Filed Oct. 17, 1942. [99]

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[Title of District Court and Cause.]

ORDER DENYING MOTION FOR NEW TRIAL

The court has studied with both interest and profit the ably and carefully prepared brief of counsel for defendant. It is, however, the considered opinion of the court that this case is governed by the decision of the Circuit Court of Appeals for the Ninth Circuit in the case of *United States v. Goodyear*, 99 F.2d 523. Any modification or limitation upon the rule of that case properly should be made only by that court or by the Supreme Court of the United States. Likewise, if the case at bar is to be distinguished, in principle, from the *Goodyear* case, that distinction should properly be pointed out only by that court or by the Supreme Court of the United States. It would seem an impertinence, after the decision of the Ninth Circuit in the *Goodyear* case, for this court to re-express any of its views previously indicated in *Sampson v. Welch*,

23 F.Supp. 271, or to attempt to distinguish, in principle, [100] the case at bar from the Goodyear case.

The motion for new trial, having been fully presented in the briefs and in oral argument, is denied.

It is so ordered.

Dated: November 17, 1942.

RALPH E. JENNEY,

United States District Judge.

[Endorsed]: Filed Nov. 17, 1942. [101]

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[Title of District Court and Cause.]

#### NOTICE OF APPEAL

Notice is hereby given that Josephine Welch Overton, as Executrix of the Estate of Galen H. Welch, deceased, formerly Collector of Internal Revenue for the Sixth Collection District of California, defendant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 7th day of October, 1942.

Dated: February 16, 1943.

LEO V. SILVERSTEIN,

United States Attorney.

E. H. MITCHELL,

Assistant United States Attorney.

By E. H. MITCHELL,

Attorneys for Defendant.

[Endorsed]: Filed Feb. 16, 1943 and mailed copy to Frank Mergenthaler, Attorney for Appellee.[102]

[Title of District Court and Cause.]

ORDER AND STIPULATION RE RECORD  
ON APPEAL

Whereas, the defendant in the above-entitled action has taken an appeal from the judgment in this case to the United States Circuit Court of Appeals for the Ninth Circuit, and the record therein consists, among other things, of a number of written exhibits that were introduced in evidence by the plaintiff; and

Whereas, it is the desire of the parties hereto, in order to save the time, labor and expense of making photostatic copies thereof, to facilitate printing and to permit inspection by the appellate court of the originals, that said original documents be sent to the said court in lieu of copies;

Now, therefore, it is stipulated and agreed, by and between the parties, through their respective counsel undersigned, that the originals of plaintiff's ex-

hibits numbered 2, 3, 4, 5, 6, 7 and 8, inclusive, be sent to the appellate [103] court in lieu of copies.

Dated: May 11, 1943.

FRANK MERGENTHALER,  
Attorney for Plaintiff-Appellee.  
LEO V. SILVERSTEIN,  
United States Attorney.  
E. H. MITCHELL,  
Assistant United States At-  
torney.  
By E. H. MITCHELL,  
Attorneys for Defendant-  
Appellant.

It is so ordered this 11 day of May, 1943.

RALPH E. JENNEY,  
Judge of the District Court.

[Endorsed]: Filed May 11, 1943. [104]

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[Title of District Court and Cause.]

STIPULATION AS TO CONTENTS OF  
RECORD ON APPEAL

Whereas, the defendant in the above-entitled action has taken an appeal from the judgment in this case to the United States Circuit Court of Appeals for the Ninth Circuit, and has heretofore filed her Designation of Contents of Record on Appeal; and

Whereas, it is the desire of the parties hereto

to lessen the size of the record by eliminating certain portions thereof designated by defendant;

Now, therefore, it is hereby stipulated and agreed by and between the parties, through their respective counsel undersigned, that this stipulation shall supersede and take the place of said defendant's Designation heretofore filed.

It is further stipulated and agreed that the complete record and all of the proceedings and evidence in the above-entitled action be incorporated in the [105] record on appeal, including the following:—

1. Complaint.
2. Answer.
3. Stipulation waiving jury trial, dated September 15, 1936.
4. Entry of August 31, 1937, relating to the filing of Stipulation and Order Vacating Order of Submission and resubmitting the case of Judge Ralph E. Jenney on the same evidence and briefs.
5. The trial court's Minute Order of May 18, 1938.
6. Order vacating Original Opinion and directing that Findings and Conclusions be prepared by plaintiff's counsel, filed January 9, 1941.
7. Order dated and filed February 16, 1942, substituting Josephine Welch Overton, Executrix, as defendant in place of Galen H. Welch, deceased.
8. Supplemental Complaint filed May 9, 1942.
9. Answer thereto, filed June 10, 1942.
10. Defendant's Objections to form of Findings and Conclusions proposed by plaintiff, filed August

8, 1942 (omitting, however, any Points and Authorities attached thereto.)

11. Defendant's Notice of Motion for leave to file Amended Answer to original Complaint, filed September 5, 1942 (omitting, however, any Points and Authorities attached thereto).

12. Findings of Fact and Conclusions of Law, lodged August 5, 1942, and filed October 7, 1942.

13. Judgment dated and filed October 7, 1942.

14. Defendant's Motion for New Trial, filed October 17, 1942 (omitting, however, the Points and Authorities attached thereto).

15. Order denying defendant's Motion for New Trial, dated and filed November 17, 1942.

16. Plaintiff's Exhibit No. 1, the "Stipulation as to Facts".

17. Plaintiff's Exhibits 2, 3, 4, 5, 6, 7 and 8.

18. Supplemental Stipulation as to Facts, filed June 6, 1938. [106]

19. Second Supplemental Stipulation as to Facts, filed July 1, 1938.

20. Third Supplemental Stipulation as to Facts, filed September 6, 1938.

21. Reporter's Transcript of Proceedings of December 14, 1936.

22. Notice of Appeal, filed February 16, 1943.

23. Order of March 25, 1943, extending to May 15, 1943, appellant's time to file record and docket cause on appeal.

24. Order and Stipulation concerning use on appeal of original exhibits in lieu of copies thereof, dated May 11, 1943.

25. This Stipulation.

Dated: May 12th, 1943.

FRANK MERGENTHALER,  
Attorney for Plaintiff-  
Appellee.

LEO V. SILVERSTEIN,  
United States Attorney.

E. H. MITCHELL,  
Assistant United States At-  
torney.

By E. H. MITCHELL,  
Attorneys for Defendant-  
Appellant.

[Endorsed]: Filed May 12, 1943. [107]

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[Title of District Court and Cause.]

ORDER EXTENDING TIME TO  
DOCKET APPEAL

Upon motion of defendant, and good cause appearing therefor:

It Is Hereby Ordered that the time within which to file the record and docket the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby extended to and including the 15th day of May, 1943.

Dated this 25th day of March, 1943.

RALPH E. JENNEY

United States District Judge.

[Endorsed]: Filed Mar. 26, 1943. [108]

[Title of District Court and Cause.]

## CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 108, inclusive, contain full, true and correct copies of: Complaint, Refund of Federal Estate Taxes; Answer; Stipulation Waiving Trial by Jury; Stipulation as to Facts (Plaintiff's Exhibit No. 1); Minute Orders Entered August 31, 1937, and May 18, 1938, Respectively; Supplemental Stipulation as to Facts; Second Supplemental Stipulation as to Facts; Minute Order Entered January 9, 1941; Order of Substitution; Supplemental Complaint; Answer to Supplemental Complaint; Defendant's Objections to Form of Findings and Conclusions; Notice of Motion for Leave to File Amended Answer to Original Complaint; Minute Order Entered Sept. 28, 1942; Findings of Fact and Conclusions of Law; Judgment; Motion for New Trial; Order Denying Motion for New Trial; Notice of Appeal; Order and Stipulation re. Record on Appeal; Stipulation as to Contents of Record on Appeal and Order Extending time to Docket Appeal which together with Original Plaintiff's Exhibits Nos. 2 to 8, inclusive, and Original Reporter's Transcript transmitted herewith, constitute the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.



Witness my hand and the seal of said District Court this 13th day of May, A. D. 1943.

[Seal]

EDMUND L. SMITH

Clerk

By THEODORE HOCKE

Deputy Clerk.

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[Title of District Court and Cause.]

TESTIMONY

Before Honorable Albert Lee Stephens

Appearances:

For the Plaintiff:

FRANK MERGENTHALER, Esq.

For the Defendants:

PEIRSON M. HALL,

United States Attorney; and

E. H. MITCHELL,

Assistant United States Attorney.

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Los Angeles, California,

Monday, December 14, 1936;

2:15 p.m.

Mr. Mergenthaler: I would like to offer some documents in evidence, a stipulation which Mr. Mitchell has been good enough to sign.

Mr. Mitchell: For the purpose of the record, the defendant objects to the introduction of any evidence on the ground that the complaint does not state a cause of action.

The Court: Well, when are you going to present that question?

Mr. Mitchell: I would suggest we argue it upon the final submission.

The Court: And reserve a ruling until then?

Mr. Mitchell: Yes.

The Court: Very well.

The Clerk: Plaintiff's Exhibit No. 1.

(The stipulation referred to was received in evidence and marked "Plaintiff's Exhibit No. 1.")

Mr. Mergenthaler: I would like to offer in evidence, if the Court please, a photostat of a certified copy of the Federal Estate Tax Return, in the estate of W. O. Sampson, deceased.

The Clerk: Plaintiff's Exhibit No. 2. [2\*]

(The photostat referred to was received in evidence and marked "Plaintiff's Exhibit No. 2.")

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\* Page numbering appearing at top of page of original Reporter's Transcript.

PLAINTIFF'S EXHIBIT No. 2

Form 706

Treasury Department  
Internal Revenue Service  
Revised June, 1930

RETURN FOR FEDERAL ESTATE TAX

[Pencil Notations] : 5314—6th Calif Orig P.C.

(Not to Be Filled in by Taxpayer)

Time to file return extended by Commissioner to..... Collection District..... Bureau File No.....  
By Collector to.....

ASSESSMENTS OF RETURNED TAX      PAYMENTS OF RETURNED TAX      Collector of Internal Revenue will stamp here date return filed.  
Amount    List    Page Line    Date    Principal    Interest    [Stamped] : Received Dec. 21, 1931.  
1,197.09    Dec. 31    302 0    12-21-31    1,197.09    Estate Tax Section, Internal Revenue 6th Cal. [Initialed] : S.

Tentative findings, \$..... Deficiency determined, \$.....

ASSESSMENTS OF DEFICIENCY IN TAX		PAYMENTS OF DEFICIENCY IN TAX		Interest assessed on deficiency from due date to date of assessment		All other interest Adjustments	
Amount of on deficiency exclusive of tax to date of interest of assessment	Interest	Page Line	Date	Amount of deficiency exclusive of interest	Interest	Assessments	Adjustments
659.31	26.44	102 1	Dec. 1934				
			1st Suppl.				
459.76	18.47	101 4	Dec. 1932				
			4th Suppl.				

[Initialed] : CS

## Plaintiff's Exhibit No. 2—(Continued)

An Itemized Inventory by Schedules of the Gross Estate of the Decedent, with Legal Deductions, to Be Filed in Duplicate

Decedent's name William Orlando Sampson

Date of death December 28, 1930.

Residence at time of death #213 No. Norton Ave., Los Angeles, California.

## General Instructions—Read with Care

1. The return is required for the estate of every resident decedent who died after the effective date of the Revenue Act of 1926 and the value of whose gross estate at the date of death exceeded \$100,000; for the estate of every resident decedent who died prior to such date and subsequent to September 8, 1916, whose gross estate exceeded \$50,000; and for the estate of every nonresident decedent any part of whose gross estate was at the date of death situated (within the meaning of the statute) in the United States. The term "United States" means only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

2. The return is due one year after the date of death. The Return for a Resident Decedent should be filed with the collector of the district in which such decedent was domiciled at the time of death. The Return for a Nonresident Decedent should be filed with the United States Collector of Internal Revenue of the district in which the gross estate was situated, or, if situated within more than one district, or if the gross estate consisted wholly of stock

## Plaintiff's Exhibit No. 2—(Continued)

in a domestic corporation, then with the Collector of Internal Revenue for the Second New York District, New York, N. Y., or with such other collector as the Commissioner may designate.

3. Remittance in payment of the tax should be made payable to "Collector of Internal Revenue at . . . . .," naming city in which is located the office of the collector with whom the return is filed.

4. Before the return is prepared, Regulations 70, 1929 Edition, and any amendments thereto, should be carefully studied. The instructions given with respect to the individual schedules apply to the estates of decedents dying after the enactment of the Revenue Act of 1926, except such instructions as clearly refer to decedents who died prior to that date. If the decedent died prior to 10.25 a.m., Washington, D. C., time, February 26, 1926, this form is to be used but reference should be made to Article 110 of the regulations for a statement of the applicable rules.

5. All papers used in preparing the return should be carefully preserved for reference or inspection, as each estate tax return is verified by an Internal Revenue officer before the tax is determined by the Bureau.

6. If the decedent was a resident and left a will, two copies thereof, one of them certified, must be filed with the return. In the case of the estate of a Nonresident, there should be filed with the return—

(a) A certified copy of the will, if decedent died testate, or of each will, if decedent left

## Plaintiff's Exhibit No. 2—(Continued)

more than one to govern in different jurisdictions.

(b) A certified copy of inventory of the complete gross estate, whether situated within or without the United States, if any deductions are claimed. In such case separate schedules should be made for property within and without the United States.

(c) A certified copy of schedule of debts and expenses allowed, if deduction on account thereof is claimed. If certified copy of inventory of all property outside the United States is filed with the return, such property need not be entered under the respective schedules of the return. See Article 52, Regulations 70, 1929 Edition.

7. This form consists of cover sheets, general information sheet, and sixteen schedules. Care should be taken to see that the return is complete and that all schedules are included in the proper order.

In the estate of a resident the various items comprising the gross estate must be set forth upon the schedules provided.

[Written] a1

[Page 2]

8. The questions asked under each schedule should be specifically answered, and if the decedent owned no property of any class specified under the schedule, the word "None" should be written across the schedule. If deduction under Section 303(a)(2) or Section 303(b)(2) is claimed, Schedule G-1 should be

## Plaintiff's Exhibit No. 2—(Continued)

completed before the schedules which precede it are prepared.

9. If there is not sufficient space for all entries under any schedule, use additional sheets of the same size, numbering them consecutively, and insert them in the proper order in the return.

10. The return should be prepared in accordance with articles 12 and 65 of Regulations 70, 1929 Edition. Instructions will be found under each schedule. If instructions are carefully observed, it will greatly assist the estate and the Bureau in the final determination of the tax liability.

11. Penalties.—For penalties for failure to file return when due, keep records, and supply information, or for the preparation or presentation or the aiding or assisting in the preparation or presentation of a false or fraudulent return, affidavit, claim, or document, see Sections 320, 1103, 1114 of the Revenue Act of 1926. Reference is also made to Section 616 of the Revenue Act of 1928.

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## General Information Sheet

The information called for on this page is necessary for purposes of record and verification. Fill out all blanks carefully and completely.

The names of the decedent's legal heirs and next of kin, or if decedent left a will, the names of the beneficiaries thereunder, are required to be stated.

## Plaintiff's Exhibit No. 2—(Continued)

If there are more than ten, only the names of the ten principal ones are required.

Did decedent die testate? (Answer "Yes" or "No.") Yes. If testate, two copies, one of them certified, of the last will must be filed with the return, unless the decedent was a nonresident, in which case but one copy, certified, is required.

Permanent residence at time of death #213 No. Norton Ave., Los Angeles, Calif.

Actual place of death City of Los Angeles, California, Age at death 58.

Cause of death Lobar Pneumonia.

How long ill Six weeks.

Business or employment Secretary & Treasurer of Bullock's, Inc.,

Business address 7th & Broadway, Los Angeles, California.

Was decedent married or single at date of death? Married Widow? ----- Widower? No.

State number of children, if any —Four (4)—

## HEIRS, NEXT OF KIN, DEVISEES AND LEGATEES

Name	Relationship	Address
Mae H. Sampson	Widow	213 No. Norton Av. L.A. Calif.
Wilma Maud Pritchett	Daughter	" " " "
Ruth Anna Dollar	Daughter	" " " "
Ralph Herrick Sampson	Son	" " " "
Clement Griffith Sampson	Son	" " " "

Names of decedent's physicians:

Charles A. Warmer



Plaintiff's Exhibit No. 2—(Continued)

Address:

412 W. 6th St., Los Angeles, Calif.

Names of physicians and nurses who attended decedent during last illness:

Dr. Charles A. Warmer

Address

412 W. 6th St., Los Angeles, Calif.,

Dr. Robt. W. Langley

1052 W. 6th St., Los Angeles, Calif.

Mary Haneld, Nurse

4600 Kingswell Ave., L. A., Calif.

G. L. Schuckert, Nurse

1310 $\frac{1}{4}$  No. Virgil Ave., L. A. Calif.

(If more space is needed, insert additional sheets of same size)

[Written] a2

WILL

I, William Orlando Sampson, a resident of the City of Los Angeles, County of Los Angeles, State of California, being of the age of forty-six years, do make, publish and declare this my Last Will and Testament, hereby revoking all former wills by me at any time made.

First: I give, bequeath and devise to my beloved wife, Mae Sampson, all of my property of every kind and nature whatsoever and wheresoever situated.

Second: I make no provision for our children,

## Plaintiff's Exhibit No. 2—(Continued)

Wilma Maud Sampson, Ruth Anna Sampson, Ralph Herrick Sampson and Clement Griffith Sampson, but leave the care and maintenance of said children to my said wife.

Third: I hereby nominate and appoint my said wife, Mae Sampson, executrix of this my Last Will and Testament, and request that she shall not be required to give any bond for the faithful performance of her duties as such executrix. And I hereby authorize my said executrix to sell, lease or otherwise dispose of all or any part of my said estate without the order of any Court, at either public or private sale, with or without notice, and for such consideration and upon such terms as my said executrix may see fit.

In Witness Whereof, I have hereunto signed my name at Los Angeles, California, on this 9th day of November, 1918.

WILLIAM ORLANDO SAMPSON

The foregoing instrument was, at the date hereof, by the said William Orlando Sampson signed and published as, and declared to be, his Last Will and Testament, in the presence of us, who, at his request and in his presence and in the presence of each other, have subscribed our names as witnesses hereto.

W. W. MILLER

residing at 1943 So. Arlington  
St., Los Angeles

W. E. GOODHUE

residing at 319 No. Jackson  
St., Glendale, Calif.

Plaintiff's Exhibit No. 2—(Continued)

Received Dec 21 1931 Estate Tax Section Internal Revenue 6th Cal.

The foregoing instrument is a correct copy of the original as the same appears of record.

Attest December 18 1931

[Seal]

L. E. LAMPTON

(Illegible) The Superior

(Illegible) County of Los

Angeles, California

By L J MILLER

Deputy

[Endorsed] No. 116257 Last Will and Testament of William Orlando Sampson Filed Jan. 5, 1931 L. E. Lampton, County Clerk By J R. Sweesy Deputy

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GROSS ESTATE

SCHEDULE A

Real Estate

Instructions

Property which ordinarily would be listed under this schedule or under Schedules B to F, inclusive, is to be listed under Schedule G-1 if it is the basis of a claim for deduction under Schedule G-2. Reference is made to pages 15 and 16.

Real estate, improved or unimproved, should be so described and identified that upon investigation by an Internal Revenue officer, it may be readily located for inspection and valuation. For each parcel

## Plaintiff's Exhibit No. 2—(Continued)

## Schedule A—(Continued)

of real estate there should be given the area and, if the parcel is improved, a short statement of the character of the improvements. For location, such details as the following may be necessary:

City or Town Property.—Street and number, ward, subdivision, block and lot, etc.

Rural Property.—Township, range, block and lot, street, landmarks, etc.

If any item of real estate is subject to mortgage, the unpaid balance of the mortgage should be shown below under "Description." The full value of the property and not the equity must be extended in the value column. The mortgage should be deducted under Schedule J of this return.

Real property which the decedent has contracted to purchase should be listed in this schedule. The full value of the property and not the equity must be extended in the value column. The unpaid portion of the purchase price should be deducted under Schedule I of this return.

The value of dower, curtesy, or a statutory estate created in lieu thereof, is taxable, and no reduction on account thereof or on account of homestead or other exemptions should be made in returning the value of the real estate.

All rents accrued and unpaid should be apportioned to the date of death, whether due at that time or not.

Plaintiff's Exhibit No. 2—(Continued)

Schedule A—(Continued)

For further instructions see article 2 and articles 10 to 13, inclusive, Regulations No. 70, 1929 Edition.

Did the decedent, at the time of death, own any real estate? (Answer "Yes" or "No.") Yes.

Item No.	Description	Assessed	Fair Market	Rents Accrued
		Value for year of Decedent's Death	Value at Date of Decedent's Death	
1	Situate in the City and County of Los Angeles, State of California, described as follows:— That portion of Lot 12 of the Stanford Avenue Tract as per map recorded in Book 55, Page 86, of Miscellaneous Records of said County, described as follows:— Beginning at the Southwest Corner of said Lot 12, thence Southeasterly along the line of 9th Street 36.825 feet; thence Northerly in a direct line to a point in the North line of said Lot 12, 13.2825 feet westerly from the Northeast corner thereof, thence Westerly 34.5675 feet along the Northerly line of said Lot 12 to the Northwest corner thereof; thence Southerly along the Westerly line of said Lot, 100 feet to the place of beginning, being Nos. 901-903 East Ninth Street, Los Angeles, California .....	\$5,710.	12,600.	242.46

(This Schedule continued on following page)

Totals of Schedule A contin- ued .....	9,540.	20,000.	0
	<hr/>	<hr/>	<hr/>
Totals .....		\$32,600.	\$ 242.46
		<hr/>	<hr/>
Grand Total .....			\$32,842.46

Plaintiff's Exhibit No. 2—(Continued)

Schedule A—(Continued)

(If more space is needed, insert additional sheets of same size)  
Estate of William Orlando Sampson, Date of death Decem-  
ber 28, 1930.

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Schedule A—Continued  
Real Estate

Item No.	Description	Assessed	Fair Market	Rents Accrued to date of Death
		Value for year of Decedent's Death	Value at Date of Decedent's Death	
2	Situate in the City and County of Los Angeles, State of Cali- fornia, described as follows:— Lot 91 of Tract 499, as per Map recorded in Book 18, Page 105 of Maps, Records of Los Angeles County, being No. 213 North Norton Ave., Los Angeles, California,.....	\$9,540.	20,000.	0
3	Holding Association filing on 40 acres of oil land in Wyo- ming, near Cody, .....		0	
		<hr/>	<hr/>	<hr/>
	Amounts carried forward.....	\$9,540.	\$20,000.	0

Estate of William Orlando Sampson, Deceased. Date of  
Death Dec. 28, 1930.

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Plaintiff's Exhibit No. 2—(Continued)

[Page 4]

SCHEDULE B

Stocks and Bonds

Instructions

Give a complete description of all securities.

Stocks.—State the number of shares, whether common or preferred, and if preferred, what issue thereof, par value.

Stocks.—State the number of shares, common or preferred, par value, and quotation at which returned, exact title of corporation, and, if the stock is unlisted, the location of the principal business office. If a listed security, state principal exchange upon which sold.

Examples: 10 shares Public Service Corporation of New Jersey, 8 per cent cumulative preferred, par \$100, at 125, New York Exchange.

10 shares Public Service Corporation of New Jersey, 7 per cent cumulative preferred, par \$100, at 108 $\frac{3}{4}$ , New York Exchange.

10 shares Public Service Corporation of New Jersey, 6 per cent cumulative preferred, par \$100, at 99 $\frac{1}{2}$ , New York Exchange.

10 shares Eagle Manufacturing Co., Red Bank, N. J., unlisted, common, par \$25, at 30, per Exhibit A, incorporated in New Jersey.

Bonds.—State quantity and denomination, exact title, kind of bond, interest rate, interest and due dates. State the exchange upon which listed if unlisted, the principal business office of the company.

Example: Ten \$1,000 Baltimore & Ohio Railway Co. first mortgage 4 per cent registered 50-year gold

## Plaintiff's Exhibit No. 2—(Continued)

## Schedule B—(Continued)

bonds, due 1948, January, April, July, and October, at 96, New York Exchange.

Valuation.—The value as of the date of death should be returned. This value can in general be found by the application of the rules stated below. If as to any security, it is contended that the application of these rules would not give such value, the evidence upon which the contention is based should be filed with the return.

Listed stocks and bonds should be returned at the mean between the highest and lowest quoted selling price upon the date of death, or if there were no sales on day of death, then at the mean between the highest and lowest sales on the nearest date thereto, if within a reasonable period. If death occurred on a Sunday or other holiday, quotations of the nearest previous day should be used; if listed on several exchanges, quotations of the principal exchange should be employed.

If actual sales are not available and the stock is quoted on a bid and asked basis, the bid as of date of death should be taken.

Unlisted securities which are dealt in actively by brokers or have an active market should be returned at the sale price as of the date of death or the nearest date thereto, if within a reasonable period either before or after death. Only sales in the normal course of business should be employed. Where no such sale occurred the nearest bid should be used,



## Plaintiff's Exhibit No. 2—(Continued)

## Schedule B—(Continued)

if within a reasonable period either before or after death.

Inactive stock and stock in close corporations should be valued upon the basis of the company's net worth, earning and dividend paying capacity, general market conditions, and special conditions affecting the particular company, its future prospects, and all other factors having a bearing upon the value of the stock. The financial and other data upon which the estate bases its valuation should be submitted with the return.

Securities returned as of no value, nominal value, or obsolete, should be listed last, and the address of the company and the State and date of incorporation should be stated. Correspondence or statements used as the basis for return at no value should be retained for inspection.

Interest on bonds should be apportioned to the date of death and returned in the interest column. Dividends upon stock declared prior to death, and payable after date of death, must be returned separately in the interest column unless reflected in the price at which the stock is returned.

In estates of nonresidents there should be listed in this schedule all stocks and bonds physically in the United States at date of death (as to meaning of the term "United States" see paragraph numbered "1" on the first page of this form), and the actual depository on that date should be shown. In such estates there should also be listed in this schedule

## Plaintiff's Exhibit No. 2—(Continued)

## Schedule B—(Continued)

the stocks of all corporations and associations created or organized in the United States. The foregoing requirements of this paragraph should be complied with, even though an inventory of the entire gross estate wherever situated is filed with the return.

Paragraph 3 of article 13, and article 12, Regulations No. 70, 1929 Edition, should be carefully reviewed before preparing this schedule.

Did the decedent, at the time of death, own any stocks or bonds? (Answer "Yes" or "No.") Yes.

If a resident decedent owned any stocks or bonds at the date of his death, they should be entered on pages 5 and 6. If the decedent was a nonresident, there should be entered on pages 5 and 6 such stocks and bonds subject to tax as above indicated.

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## Schedule B—Continued

## Instructions

For detailed instructions regarding the method of valuing stocks and bonds, see the preceding page.

Item No.	Description	Fair market value at date of death	Interest or dividends
Common Stocks			
1	11,150 shares Bullock's, Inc. no par	\$223,000.00	
2	15 shares American Safety Razor Corporation, no par .....	825.00	
3	30 shares Caterpillar Tractor Company no par .....	746.25	
4	50 Citizens National Trust & Savings Bank shares \$1,000 par value .....	4,000.00	
5	10 shares Columbia Gas & Electric Co. no par.....	318.75	
6	2 shares Columbia Oil & Gasoline Co. no par .....	9.25	

Plaintiff's Exhibit No. 2—(Continued)  
 Schedule B—(Continued)

Item No.	Description	Fair market value at date of death	Interest or dividends
7	10 shares Credit Finance Corporation, \$1,000 par value..	No Value	
8	50 shares Curtis Wright Corporation, no par.....	106.25	
9	10 shares Dilfer Bond & Mortgage Co., par value \$1,000.00 .....	900.00	
10	10 shares General Foods Corporation, no par .....	467.50	
11	10 shares General Mills, Inc. no par .....	450.00	
12	12 shares General Motors Corporation, par value \$120.....	409.50	
13	10 shares National Dairy Products Corporation, no par....	365.00	
14	15 shares Pacific American Fire Insurance, Company, par value \$150.00 .....	375.00	
15	25 Packard Motor Car Co., no par .....	203.13	
16	12 shares Phillips Petroleum Co. no par .....	151.50	
17	12 shares Taylor Milling Corporation, no par.....	234.00	
18	20 shares Union Oil Company of California, par value \$500	420.00	
19	30 shares Van de Kamp's Holland-Dutch Bakers, Inc., no par .....	750.00	
20	10 shares Walworth Company, no par .....	106.25	
(See next page for Preferred Stocks)			
	Totals .....	\$233,837.38	
Grand Total .....			\$233,837.38
Amounts carried forward .....			\$233,837.38

(Continued on page 6)

Plaintiff's Exhibit No. 2—(Continued)  
 Schedule B—(Continued)

Estate of William Orlando Sampson, Date of death December 28, 1930.

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## Instructions

For detailed instructions regarding the method of valuing stocks and bonds, see page 4.

Item No.	Description	Fair market value at date of death	Interest or dividends
Amounts brought forward .....		\$233,837.38	\$
Preferred Stocks			
21	300 shares Bullock's, Inc. 7%, par value \$30,000.00.....	27,000.00	
22	10 shares Commonwealth & Southern Corp, no par.....	875.00	
23	10 Credit Finance Corporation shares, par value \$1,000.00..	No value	
24	10 shares Wm. Filene's Sons Co. 6½%, par value \$1,000.00	900.00	
25	12 shares Gamewell Co. ....	637.50	
26	15 shares Grand Union Co., convertible, \$3.00, no par....	540.00	
27	100 shares New Dominion Cop- per Co., Class A, 8% cu- mulative, par value \$100.00	No value	
28	80 shares Pan-Pacific Consoli- dated Oil Co. ....	No value	
29	6 shares Van de Kamp's Hol- land-Dutch Bakers, Inc., \$6.50 cumulative, no par....	510.00	
Bonds			
30	Bullock's, Inc. 6%, 1947 secured Sinking Fund Gold Bonds, par value \$1000.00 .....	980.00	14.60
31	Caterpillar Tractor Co. 5%, 1935, par value \$1,000.00 .....	960.00	12.22
32	Chicago Great Western Railway, 4%, 1959, par value \$1,000.00.....	630.00	13.11

Plaintiff's Exhibit No. 2—(Continued)  
 Schedule B—(Continued)

Item No.	Description	Fair market value at date of death	Interest or dividends
33	Home Service Company, 6½%, 1942, par value \$1,000.00.....	\$ 880	\$ 15.90
34	Los Angeles Union Terminal Co. 6%, 1941, par value \$100.00.....	101.00	9.50
35	Miller & Lux, 7%, 1935, par value \$1000.00 .....	900.00	17.11
36	National Dairy Products Co. 5¼%, 1948, par value \$1000.00.....	980.00	21.87
(Bonds Continued on Next Page)			
Totals .....		\$269,730.88	\$ 104.31
Grand Total .....			\$269,835.19
Amounts carried forward.....		\$269,730.88	\$ 104.31
(Continued on page 7)			

Estate of William Orlando Sampson, Date of death December 28, 1930.

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 (Page 7)

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Schedule B—Continued  
 (For Instructions See Page 4)

Instructions

Amounts brought forward.....\$269,730.88 \$ 104.31

Bonds (Continued)

37	Oakmont Country Club, 6%, 1932, par value \$2,000.00.....	1,000.00	4.50
38	Pacific Steamship Co., 6½%, 1940, par value \$1,000.00.....	350.00	Default
39	Pacific Palisades Assn., 6½%, 1938, par value \$1,000.00.....	990.00	15.90
40	Sinclair Consolidated Oil Corporation, 7%, 1937, par value \$1,000.00	970.00	22.94
Totals .....		\$273,040.88	\$ 147.65
Grand Total .....			\$273,188.53

## Plaintiff's Exhibit No. 2—(Continued)

## Schedule B—(Continued)

(If more space is needed, insert additional  
sheets of same size)

Estate of William Orlando Sampson, Date of death December 28, 1930.

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## SCHEDULE C

Mortgages, Notes, Cash, and Insurance  
Instructions

The five classes of property on this schedule should be listed separately in the order given.

Mortgages—State (1) face value and unpaid balance, (2) date of mortgage, (3) date of maturity, (4) name of maker, (5) property mortgaged, (6) interest dates and rate of interest, and (7) amount of unpaid interest. For example: Bond and mortgage for \$5,000, unpaid balance \$4,000; dated January 1, 1923, John Doe to Richard Roe; premises 22 Clinton St., Newark, N. J., due January 1, 1933; interest payable at 6 per cent per annum January 1 and July 1; interest paid to January 1, 1927; unpaid interest \$30. Reference is made to article 13 (5) of Regulations 70, 1929 Edition.

Notes, Promissory.—Give similar data.

Contract by the Decedent to Sell Land.—Give name of vendee, date of contract, description of property, sale price, initial payment, amounts of installment payments, unpaid balance of principal and accrued interest, interest rate, and date prior

## Plaintiff's Exhibit No. 2—(Continued)

## Schedule C—(Continued)

to decedent's death to which interest had been paid.

Cash in Possession.—List separately from bank deposits.

Cash in Bank.—Name bank and address, amount in each bank, serial number and nature of account, stating whether checking, savings, time deposit, etc. Include accrued interest in income column, or indicate if included in total on deposit. If statements are obtained from banks they should be retained for inspection by an internal-revenue agent. Reference is made to article 13 (6) of Regulations 70, 1929 Edition.

Insurance.—Include all insurance taken out by the decedent upon his own life as follows: (a) All insurance receivable by or for the benefit of the estate; (b) all other insurance to the extent that it exceeds in the aggregate \$40,000 if the insured retained the right to change the beneficiary or if the insurance was taken out, or the beneficiary receiving the proceeds was named, after the enactment of the Revenue Act of 1918. Insurance payable to the estate must be returned first. State (1) name of company, (2) number of policy, (3) name of beneficiary. Include full amount receivable. If there is insurance payable to beneficiaries other than the estate, deduction may be taken at bottom of this page equal to the amount returned for such insurance, but not exceeding \$40,000. For further instructions see articles 25 to 28, inclusive, Regulations No. 70, 1929 Edition.

## Plaintiff's Exhibit No. 2—(Continued)

## Schedule C—(Continued)

If Decedent Was a Nonresident, and died subsequent to 3.55 p. m. November 23, 1921, Washington, D. C., time, insurance on his life need not be included as a part of his gross estate.

Accounts in banks situated in the United States should be included if decedent died subsequent to said date and was engaged in or doing business in the United States at death. Report fully all facts concerning any account not included.

(1) Did the decedent, at the time of his death, own any mortgages, notes, or cash? (Answer "Yes" or "No")—Yes.

(2) Was any insurance on life of decedent receivable by his estate? (Answer "Yes" or "No.")—No.

(3) Was any insurance on life of decedent receivable by beneficiaries other than the estate? (Answer "Yes" or "No")—Yes.

Item No.	Description	Fair market value at date of death	Income or interest accrued to date of death
		\$	\$
	See annexed Schedule C.		
	Total.....	\$134,532.38	
	Less amount of insurance re- ceivable by beneficiaries, oth- er than the estate, not in ex- cess of \$40,000.....	\$ 40,000.00	
	Totals .....	\$ 94,532.38	\$ 94,532.38?
	Grand Total .....		\$ 94,532.38?

(If more space is needed, insert additional  
sheet of same size)



Plaintiff's Exhibit No. 2—(Continued)

Schedule C—(Continued)

Estate of William Orlando Sampson, Date of death December 28, 1930.

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Item No.	Description	Fair market value at date of death	Income or interest accrued to date of death
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Notes

1	Note of John G. Bullock, dated 6/24/30, for \$12,500.00..\$	12,500.00	
2	Note of P. G. Winnett, dated 6/24/30 for \$12,500.00.....	12,500.00	
3	Note of A. D. and Faith L. Sampson, to W. O. Sampson, dated April 11, 1924, due one year after date, for \$100.00 .....	—	—

Checks

4	Caterpillar Tractor Co. dated Nov. 25, 1930, for \$10.00....	10.00	
5	American Safety Razor Co. dated Dec. 31, 1930 for \$18.75 .....	18.75	
6	American Auto Insurance Co. dated Dec. 20, 1930, for \$7.25 .....	7.25	
7	E. A. Downey, for \$35.00.....	35.00	
8	The Commonwealth & Southern Corporation for \$15.00	15.00	
9	Wm. Filene's Sons Co. for \$16.25 .....	16.25	
10	National Dairy Products Corporation, for \$6.50.....	6.50	
11	Phillips Petroleum Co. for \$6.00 .....	6.00	
12	Van de Kamp's Holland Dutch Bakers, Inc. for \$9.75.....	9.75	
13	Van de Kamp's Holland Dutch Bakers, Inc. for \$11.25.....	11.25	

## Plaintiff's Exhibit No. 2—(Continued)

## Schedule C—(Continued)

14	Taylor Milling Corporation for \$7.50 .....	7.50	
15	Citizens National Trust & Savings Bank, for \$50.00....	50.00	
	Life Insurance Policies Mae Sampson, Beneficiary		
	Policy No.		
16	1114796, Penn. Mutual Life Ins. Co. ....	5,039.61	
17	74521, Union Central Life Ins. Co. ....	5,054.81	
18	406,409 Provident Mutual Life Ins. Co. ....	8,130.03	
19	424100, Provident Mutual Life Ins. Co. ....	5,043.18	
20	461463, Provident Mutual Life Ins. Co. ....	5,025.44	
21	505528, Provident Mutual Life Ins. Co. ....	5,004.81	
22	577113, Provident Mutual Life Ins. Co. ....	6,034.00	
23	582438, Provident Mutual Life Ins. Co. ....	15,000.00	39,331.88
24	276752, Provident Mutual Life Ins. Co. ....	10,000.00	70,000.
25	690,423 New England Mutual Life Ins. Co. ....	10,000.00	109,331.88
26	614651, New England Mutual Life Ins. Co.....	15,000.00	40
27	690424, New England Mutual Life Ins. Co.....	20,000.00	69,331.88
	(Total Amount of Life In- surance being \$109,331.88)		
	Total.....	\$134,532.38?	

## Plaintiff's Exhibit No. 2—(Continued)

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## SCHEDULE D-1

## Jointly Owned Property

## Instructions

All property of whatever kind or character, whether real estate, personal property, bank accounts, etc., in which the decedent held at the time of his death an interest either as a joint tenant or as a tenant by the entirety, must be returned under this schedule.

The full value of the property must be included in the fourth column, unless it can be shown that a part of the property originally belonged to the other tenant or tenants and was never received or acquired by the other tenant or tenants from the decedent for less than a fair consideration in money or money's worth. (See section 302 (e) of act approved Feb. 26, 1926, and articles 22 and 23, Regulations No. 70, 1929 Edition.)

Where it is shown that the property or any part thereof, or any part of the consideration with which the property was purchased, was acquired by the other tenant or tenants from the decedent for less than an adequate and full consideration in money or money's worth, there should be omitted from this schedule only so much of the value of the property as is proportionate to the consideration furnished by such other tenant or tenants.

Where the property was acquired by gift, bequest, devise, or inheritance by the decedent and spouse as tenants by the entirety, then only one-half of

## Plaintiff's Exhibit No. 2—(Continued)

## Schedule D-1—(Continued)

the value of the property should be listed on this schedule. Where the property was acquired by the decedent and another person or persons by gift, bequest, devise, or inheritance as joint tenants, and their interests are not otherwise specified or fixed by law, then there should be entered on this schedule only such fractional part of the value of the property as is obtained by dividing the full value of the property by the number of joint tenants.

If the executor contends that less than the value of the entire property is includable in the gross estate for purposes of the tax, the burden is upon him to show his right to include such lesser value, and in such case he should make proof of the extent, origin, and nature of the decedent's interest and the interest of decedent's cotenant or cotenants.

If the property consists of real estate, the assessed value thereof for the year of death should be shown in the second column, headed "Description of property." In the third column should be entered the fair market value of the whole property, even though only a fractional part thereof is returnable in column 4. In the fourth column should be entered the amount to be included in the gross estate pursuant to the instructions given above. In the fifth column should be entered the rents, interest, and other income accrued to the date of decedent's death in the same proportion as the amount entered in column 4 bears to the amount entered in column 3.

Property in which the decedent held an interest

Plaintiff's Exhibit No. 2—(Continued)

Schedule D-1—(Continued)

as a tenant in common should not be listed here, but the value of his interest therein should be returned under Schedule A, if real estate, or if personal property, under the appropriate schedule. The value of the decedent's interest in partnerships should not be included here, but under Schedule D-2, on the following page, designated as "Other Miscellaneous Property."

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date of death
		\$.....	\$.....	\$.....
(See page inserted following this Page)				
Totals .....			\$35,532.88	
Grand Total .....				\$35,532.88

(If more space is needed, insert additional sheets of same size)

Estate of William Orlando Samspon, Date of death December 28, 1930.

D-1

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Schedule D-1

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date of death
----------	-------------------------	---	---------------------------------------	---

Real Estate

1 Parcel 1: That portion of Lots 13 and 14 of the Stanford Avenue Tract, as per Map recorded in Book 55, Page 86, Misc. Records of said County, described as follows: Commencing at a point in the North line of

## Plaintiff's Exhibit No. 2—(Continued)

## Schedule D-1—(Continued)

Item No.	Description of property	Fair market value of the property at date of decendent's death	Amount to be included in gross estate	Rents and other income accrued to date of death
	<p>9th Street, distant 11.825 feet East from the South East corner of Lot 13; thence West along the North line of said 9th St. 36.825 feet; thence North parallel with the East line of said Lot 13 to the North line thereof; thence East along the North line of said Lots 13 and 14, 34 feet more or less to a point 9.348 feet East of the North East corner of said Lot 13; thence Southerly in a direct line to the point of beginning;</p>	\$18,000.00	\$18,000.00	
	<p>Parcel 2: That portion of Lots 12 and 13 of Stanford Avenue Tract, as per Map recorded in Book 55, Page 86, Misc. Records of said County, described as follows:— Beginning at a point on the Northerly line of 9th Street, 36.825 feet Easterly from the South West corner of said Lot 12; thence Easterly along the Northerly line of 9th St. 36.825 feet, to the South Westerly corner of land conveyed to Margaret and Thomas Birmingham, by deed recorded in Book 1476, Page 114, of Deeds,</p>			

Plaintiff's Exhibit No. 2—(Continued)

Schedule D-1—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date of death
	Records of said County; thence Northerly along the Westerly line of said land conveyed to Birmingham, to the North line of said Lot 13; thence Westerly along the Northerly line of said Lots 13 and 12, to a point therein distant 13.2825 feet West from the North East corner of Lot 12, and thence Southerly to the point of beginning, being premises #907-909 East 9th St. Los Angeles, Calif.			
2	West 20 feet of Lot 207, East 30 feet of Lot 309 in			A 13
	Conner's Subdivision of the Johannsen Tract, as per book 15 page 86 of Miscellaneous Records of Lot Angeles County, California, being Nos. 4242, 4242 <sup>1</sup> / <sub>4</sub> and 4242 <sup>1</sup> / <sub>2</sub> Normal Ave., Los Angeles, California .....	\$ 8,000.00	\$ 8,000.00	
3	Lot 59 of Tract 1971 in County of Los Angeles, State of California, as per Map recorded in Book 22, page 185 of Maps in the Office of the Recorder of said County, Barnes City, Calif.	600.00	600.00	

Plaintiff's Exhibit No. 2—(Continued)  
 Schedule D-1—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date of death
4	Bank account in Citizens National Trust & Savings Bank, Los Angeles, Hill Street branch	8,227.11	8,227.11	
5	Certificate Fidelity Savings & Loan Association and accrued interest	516.32	516.32	
6	Savings Bank account First National Bank of Los Angeles, with accrued interest	189.45	189.45	
		<u>\$35,532.88</u>	<u>\$35,532.88</u>	

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SCHEDULE D-2

Other Miscellaneous Property  
 Instructions

Before this schedule is prepared, articles 12, 13 (4), and 13 (7) to 13 (10), inclusive of Regulations 70, 1929 Edition, should be read.

Under this schedule include all items of gross estate not returned under another schedule, including the following: Debts due the decedent; interests in business; claims, rights, royalties, pensions; leaseholds, judgments, shares in trust funds or in estates of decedents who died more than five years prior to the present decedent's death, or in estates of decedents who died within five years prior to



## Plaintiff's Exhibit No. 2—(Continued)

## Schedule D-2—(Continued)

the present decedent's death where the share therein is not reported on Schedule G-1, or on another schedule of this return; household goods and personal effects, including wearing apparel; farm products and growing crops; livestock, farm machinery, automobiles, etc.

When an interest in a copartnership or unincorporated business is returned, submit in duplicate statement of assets and liabilities as of date of death and for the five years preceding death, and statement of the net earnings for the same five years. Good will must be accounted for. In general, the same information should be furnished and the same methods followed as in valuing close corporations.

In listing automobiles give make, model, year, and condition as of date of decedent's death.

In describing an annuity, the name and address of the grantor of the annuity should be given, or if payable out of a trust or other fund, such a description as will fully identify it. If payable for a term of years, the duration of the term and the date on which it began should be given, and if payable for the life of a person other than the decedent, the date of birth of such person should be stated.

Judgments should be described by giving the title of the cause and the name of the court in which rendered, date of judgment, name and address of judgment debtor, amount of judgment, rate

Plaintiff's Exhibit No. 2—(Continued)  
 Schedule D-2—(Continued)

of interest to which subject, whether any payments have been made thereon, and if so, when and in what amounts.

Did the decedent, at the time of his death, own any interest in a copartnership or unincorporated business? (Answer "Yes" or "No").....

Did the decedent, at the time of his death, own any miscellaneous property not returnable under any other schedule? (Answer "Yes" or "No.") Yes.

Item No.	Description	Fair market value at date of death	Interest and other income accrued to date of death
1	Household furniture and goods located at #213 No. Norton Ave., Los Angeles, Calif. ....	\$ 900.00	\$
2	Household furniture and goods located at #4242 <sup>1</sup> / <sub>4</sub> Normal Ave., Los Angeles, Calif. ....	80.00	
3	Packard De Luxe Sedan, 1929 model, Motor Number 235,491, bought Sept. 14, 1928.....	1,000.00	
4	Bonus due from Bullock's, Inc., in the sum of \$6,166.67.....	\$ 6,166.67	
Totals .....		\$ 8,146.67	
Grand Total .....			\$ 8,146.67

(If more space is needed, insert additional sheets of same size)

Estate of Willard Orlando Sampson, Date of death December 28, 1930.

## Plaintiff's Exhibit No. 2—(Continued)

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## SCHEDULE E

## Transfers

## Instructions

All gifts or transfers, by trusts or otherwise, made or created and completed by the decedent, subsequent to September 8, 1916, in contemplation of, or intended to take effect in possession or enjoyment at or after death, other than as bona fide sales for an adequate and full consideration in money or money's worth, are subject to the tax and must be returned under this schedule and the value of the property entered in the fourth column.

Transfers made by the decedent in his lifetime, other than transfers intended to take effect in possession or enjoyment at or after death, excepting bona fide sales for an adequate and full consideration in money or money's worth, must be returned for tax or disclosed in the return as follows:

1. Transfers Made in Contemplation of Death.—  
The executor must return for tax the value as of the date of decedent's death of all property transferred by the decedent at any time in contemplation of death.
2. Transfers Not Admitted to Have Been Made in Contemplation of Death.—(a) The executor is required to disclose in the return all transfers made at any time by the decedent of an amount or value of \$5,000 or more. Any such transfer made within two years of decedent's death, but before the effective date of

## Plaintiff's Exhibit No. 2—(Continued)

## Schedule E—(Continued)

the Revenue Act of 1926, and constituting a material part of decedent's property and in the nature of a final disposition or distribution thereof, is deemed to have been made in contemplation of death within the meaning of the statute. Where the executor contends that the transfer was not made in contemplation of death, he must file with the return sworn statements in duplicate of all the material facts including, among other things, the decedent's motive in making the transfers, his mental and physical condition at that time, and one copy of the death certificate. (b) The executor is required to return for tax all transfers made by the decedent within two years prior to his death but after the effective date of the Revenue Act of 1926, to the extent that the value thereof to any one person is in excess of \$5,000 even though the transfer is not admitted to have been made in contemplation of death. The entire value of the transfer should be disclosed in the return.

All property transferred, whether before or after September 8, 1916, by the decedent during his lifetime, except bona fide sales for an adequate and full consideration in money or money's worth, received by the decedent, constitutes a part of the gross estate if the decedent reserved the income or enjoyment for his lifetime, or if, at the time

## Plaintiff's Exhibit No. 2—(Continued)

## Schedule E—(Continued)

of the decedent's death the enjoyment thereof was subject to any change through the exercise of a power to alter, amend, or revoke, either by the decedent alone or in conjunction with any person, or if, in any way, the transfer was incomplete. Where property was so transferred and the decedent, in contemplation of death, relinquished the power to alter, amend, or revoke the transfer, the transfer is subject to tax, and the value of the property must be included in columns 3 and 4 of this schedule.

Where the transfer was effected by an instrument in writing, two copies of such instrument should be filed with the return, one copy of which must be certified or verified, unless the decedent was a nonresident, in which case but one copy, certified or verified, need be filed.

The name of transferee, date and form of transfer, description of property, and fair market value at time of death should be set forth in this schedule. For further instructions see articles 15 to 21, inclusive, Regulations No. 70, 1929 Edition.

- (1) Did the decedent, at any time during his life, make any transfer in contemplation of or intended to take effect in possession or enjoyment at or after his death, other than by bona fide sale for an adequate and full consideration in money or money's worth? (Answer "Yes" or "No.") No.
- (2) Did the decedent, within two years immedi-

Plaintiff's Exhibit No. 2—(Continued)

Schedule E—(Continued)

ately preceding his death, make any transfer of a material part of his property without an adequate and full consideration in money or money's worth? (Answer "Yes" or "No.") No.

(3) Did the decedent, within two years immediately preceding his death, make any transfer of an amount or value equal to or exceeding \$5,000 without an adequate and full consideration in money or money's worth? (Answer "Yes" or "No.") No.

(4) Did the decedent, at any time, make a transfer of a material part of his property without an adequate and full consideration in money or money's worth, but not believed to have been in contemplation of death or intended to take effect in possession or enjoyment at or after his death? (Answer "Yes" or "No.") No.

(5) If the answer to question (4) is "Yes," state date, amount or value, and motive which actuated the decedent in making the transfer or transfers:

.....  
.....  
.....  
.....  
.....

(6) Did the decedent, at the time of his death, possess the right (either alone or in conjunction with any person other than the beneficiary of

Plaintiff's Exhibit No. 2—(Continued)

Schedule E—(Continued)

the transfer), to change through the exercise of a power to alter, amend, or revoke the transfer of any property previously made by him? (Answer "Yes" or "No.") No.

(7) Did the decedent, at any time during his life, relinquish in contemplation of his death the power to alter, amend, or revoke any transfer previously made by him? (Answer "Yes" or "No.") No.

(8) If the answer to either questions (6) or (7), or both of them, is "Yes," the value of the property transferred must be entered in column 4 for inclusion in the gross estate.

(9) Were there in existence at the time of the decedent's death any trusts created by him during his lifetime? (Answer "Yes" or "No.") No.

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Schedule E—Continued  
(For Instructions See Page 11)

Item No.	Description of property transferred and details of transfer	Fair market value at date of death	Fair market value to be included in gross estate	Rents and other income accrued to date of death
		\$	\$	\$
	None			
Totals .....				\$ None
Grand Total .....				\$.....

(If more space is needed, insert additional sheets of same size)

Estate of William Orlando Sampson, Date of death December 28, 1930.

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Plaintiff's Exhibit No. 2—(Continued)

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## SCHEDULE F

## Powers of Appointment

## Instructions

Property passing under a general power of appointment exercised in the decedent's will must be returned. If the decedent exercised a general power by deed, the value of the property must be included in the gross estate if the deed was made in contemplation of death or intended to take effect in possession or enjoyment at or after death, except where executed for an adequate and full consideration in money or money's worth received by the decedent. If the power is exercised for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there should be included in the gross estate only the excess of the fair market value, at the time of decedent's death, of the property passing under the power over the value of the consideration received by the decedent.

Duplicate copies of the will or deed conferring the power upon the decedent, and of the instrument by which the power was exercised, must be filed with the return, and one copy of such will or deed and one copy of the instrument must be duly certified or verified, unless the decedent was a nonresident, in which case but one copy of each document certified or verified, need be filed. The



Plaintiff's Exhibit No. 2—(Continued)

Schedule F—(Continued)

copies should be filed even though it is contended that the power was a limited one and the property passing thereunder is not returned as taxable.

Property passing under the exercise of a power of appointment should not be listed under any other schedule.

For further instructions see article 24, Regulation No. 70, 1929 Edition.

(1) Did the decedent, at any time, by will or otherwise, transfer property by the exercise of a general power of appointment? (Answer "Yes" or "No.") No.

(2) Did the decedent, at any time, by will or otherwise, exercise a limited power of appointment? (Answer "Yes" or "No.") No.

Item No.	Description and details	Fair market value at date of death	Rents and other income accrued to date of death
	None		
Totals	.....	\$	\$ None
Grand Total	.....		\$.....

(If more space is needed, insert additional sheets of same size)

Estate of William Orlando Sampson, Date of death December 28, 1930.

Plaintiff's Exhibit No. 2—(Continued)

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## SCHEDULE G-1

Property Identified As Previously Taxed  
Instructions

This schedule, as indicated in Instruction 8, page 2, is set up merely to facilitate the computation of the deduction claimed under Schedule G-2, inasmuch as such deduction may not exceed the value of the property included in this estate with respect to which the deduction is claimed. Such property should be returned in this schedule and under no other schedule.

The items in this schedule are to be listed on page 15, one item number serving for the item in Schedule G-1 and the corresponding item in Schedule G-2. The fair market value at the date of death of the present decedent should be entered in column 1 and the accruals in column 2.

For instructions concerning the description and valuation of the various classes of property in this schedule, reference should be made to the applicable instructions given with respect to the preceding schedules.

## DEDUCTIONS—SCHEDULE G-2

Deduction For Property Identified As Previously  
Taxed Instructions

The statute imposes various restrictions and limitations upon this deduction. Therefore, the explanatory articles 41, 42, and 43 of Regulations 70,

## Plaintiff's Exhibit No. 2—(Continued)

## Schedule G-2—(Continued)

1929 Edition, should be carefully read. If decedent was a nonresident, article 53 of the Regulations is applicable.

Deduction with respect to property forming part of the gross estate situated in the United States of any person who died within five years prior to the death of the present decedent, which property was received by him, from such prior decedent, by gift, bequest, devise, or inheritance, may be claimed in Schedule G-2, if there is included under Schedule G-1, the value of such property or the value of property which can be identified as having been acquired in exchange for such property.

The items in Schedule G-2 should be arranged in the order in which they appear in the Federal estate-tax return for the prior estate. The description should include a reference to the schedule and item number in such return. To make it clear that the schedule and item number relate to the prior return, they should be included in parentheses. If only a portion of an item in the prior estate is reflected in the present estate, that fact should be indicated and only a proportionate part of the value of the item in the prior estate, as determined by the Commission (indicated in the closing letter), should be entered in column 3.

In general, the amount to be entered in column 4 is the amount in column 1 or the amount in column 3, whichever is the lower.

If the present decedent exchanged property which

## Plaintiff's Exhibit No. 2—(Continued)

## Schedule G-2—(Continued)

had been received by him from the prior decedent, and additional valuable consideration was given by him in such exchange, there may be deducted in this schedule such proportion only of the value, at the date of his death, of the property so acquired by the present decedent in such exchange as the value of the property received by him from such donor or prior decedent, and parted with by him in the exchange, bore to the entire consideration given. For example: An item of property received from a donor or a prior decedent, which had a value of \$10,000, was exchanged for property valued at \$15,000, and an additional \$5,000 consideration was given by the present decedent. The full value at date of the present decedent's death of the property acquired in exchange should be listed under Schedule G-1 and two-thirds of such value deducted under Schedule G-2. The \$10,000 and \$15,000 values referred to in this example relate to the values as of the date of the exchange.

If the proceeds of several items in the prior estate were deposited in a bank account from which money was thereafter drawn to purchase property listed in Schedule G-1, the items should be grouped as a single item in this schedule, the several items in the prior estate being indicated by letters as "Item 1-a," "Item 1-b," etc. In this connection particular attention is directed to the fact that the burden of proof rests upon the taxpayer claiming the deduction. For example: The decedent deposited \$10,-

## Plaintiff's Exhibit No. 2—(Continued)

## Schedule G-2—(Continued)

000, received as a legacy from the prior estate, in a bank account in which he already had \$5,000. He next deposited in the account \$1,000 received as salary. Thereupon he gave a check for \$10,000 in payment for bonds of which the value is included in the gross estate. The check must represent \$4,000 of previously taxed property. Therefore, as shown in the previous example, four-tenths of the value of the bonds is to be considered in determining the amount to be deducted. In either of the examples given, the transaction involved should be fully explained in an affidavit filed with the return.

The following entries will illustrate the manner of preparing the combined schedules:

Plaintiff's Exhibit No. 2—(Continued)  
 Schedule G-2—(Continued)

Item No.	Description	Schedule G-1		Schedule G-2	
		Column 1	Column 2	Column 3	Column 4
1	NW 1/4 Sec. 10, T. 2 N., R. 4 W.,.....P.M. (A-3)	\$16,000.00	\$125.00	\$20,000.00	\$16,000.00
2a	\$10,000 U. S. 4th Liberty 4 1/4s @ 102-1/32	10,203.13			
b	100 sh. U. S. Steel Corp., com., par \$100 @ 138 1/2	13,850.00			
a	(B-11)			4,500.00	
b	(C-7)			20,000.00	
	See affidavit, Exhibit Y, concerning sales of these items and deposit of proceeds in bank account and purchase of items 2-a and 2-b, Schedule G-1				
3	SW 1/4 of Sec. 10, T. 2 N., R. 4 W.,.....P.M. D-2-7) 1/2 interest	16,000.00			11,333.33
				10,000.00	8,000.00

Analogous rules apply to the deduction based upon property with respect to which a gift tax was paid.

Name of donor or prior decedent.....

(Strike out words not applicable)

If a decedent, show date of death.....

Residence of donor at time of gift, or of decedent at time of death.....

Schedule G-2—(Continued)

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SCHEDULES G-1 AND G-2

Item No.	Description	Schedule G-1		Schedule G-2
		Fair market value at date of present decedent's death (Column 1)	Rents and other income accrued to date of present decedent's death (Column 2)	
	Totals, Schedule G-1.....	\$.....	\$.....	\$.....
	(Grand Total, Schedule G-1 (to be included in the gross estate)....	\$.....	\$.....	\$.....
	R. Aggregate of items in Schedule G-2 .....			\$.....
	S. Aggregate amount of Schedule H, I, J, and K.....			\$.....
	T. Portion thereof proved (see affidavit, Exhibit No.....) to have been paid without recourse to property listed in Schedule G-1 .....			.....
	U. Difference between S and T (enter in column 4).....			\$.....
	V. Deduction claimed (R minus U) .....			\$ None
	(If more space is needed, insert additional sheets of same size)			

Estate of William Orlando Sampson Date of death December 28, 1930

G-1 G-2

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Plaintiff's Exhibit No. 2—(Continued)

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## DEDUCTIONS

## SCHEDULE H

Funeral and Administration Expenses  
Instructions

Funeral expenses and administration expenses should be itemized, giving names and addresses of persons to whom payable, and exact nature of the particular expense. Preserve all vouchers and receipts for inspection by an internal-revenue agent.

No deduction may be taken upon the basis of a vague or uncertain estimate.

Executors' or administrators' commission should be entered in the amount actually paid, or which it is reasonably expected will be paid, not to exceed the amount allowable by the laws of the jurisdiction wherein the estate is administered, and not in excess of the amount usually allowed in cases similar to that of this estate. Where the commission has not been awarded by the court, deduction on final audit is discretionary with the Commissioner, subject to future adjustment.

Attorneys' fee should be deducted in the amount paid, or to be paid. If the fee has not been paid at the time of the final audit, deduction is discretionary with the Commissioner, subject to future adjustment.

Estate, legacy, succession, and inheritance taxes, and taxes on income received after death, are not deductible. Credit to a limited extent may, on page



Plaintiff's Exhibit No. 2—(Continued)  
 Schedule H—(Continued)

21 hereof, be claimed for estate, legacy, succession, inheritance, and gift taxes.

For further instructions see article 29 to 35, inclusive, and 52, Regulations No. 70, 1929 Edition.

Item No.	Amount of item	Totals
Funeral expenses:		
1 A. E. Maynes, 1201 So. Hope St., Los Angeles, Funeral Director....	\$ 2,000.00	
2 Forest Lawn Memorial Park As- sociation, Glendale, California, burial lot .....	654.00	
3 Music at Funeral.....	35.00	
	<hr/>	
Total Funeral Expenses.....		\$ 2,689.00
4 Executor's commission, estimated, <del>paid</del> .....		\$ 4,796.98
(Strike out words not applicable)		
5 Attorney's fee, estimated, <del>paid</del> ....		\$ 4,796.98
(Strike out words not applicable)		
Miscellaneous administration ex- penses:		
6 Miscellaneous costs in Probate proceeding, etc. ....	34.05	34.05
7 Appraisal fees .....	500.00	500.00
8 Ernst & Ernst, accounting fees....	400.00	400.00
	<hr/>	
Total Miscellaneous Adminis- tration Expenses .....		\$13,217.01
(If more space is needed, insert additional sheets of same size)		

Estate of William Orlando Sampson, Date of death, De-  
 cember 28, 1930.

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## Plaintiff's Exhibit No. 2—(Continued)

## SCHEDULE I

## Debts of Decedent

## Instructions

Itemize fully below all valid debts of the decedent owed by him at the time of death.

If deduction is claimed for a debt, the amount of which is disputed or the subject of litigation, only such amount may be deducted as the estate concedes to be a valid claim. If the claim is contested, that fact should be stated.

A pledge, or a subscription evidenced by a promissory note or otherwise, even though enforceable against the estate, is deductible only to the extent such pledge or subscription was made for an adequate and full consideration in cash or its equivalent received therefor by the decedent.

Enter in this schedule notes unsecured by mortgage and give full details, including name of payee, face and unpaid balance, date and term of note, interest rate and date to which interest was paid prior to death.

Care must be taken to state the exact nature of the claim as well as the name of the creditor. If the claim is for services rendered over a period of time, state the period covered by the claim. Example: Edison Electric Illuminating Company for electric service during December, 1928, \$25.

All Vouchers or Original Records should be preserved for inspection by an internal-revenue agent.

## Plaintiff's Exhibit No. 2—(Continued)

## Schedule I—(Continued)

For further instructions see articles 29, 30, 36, 37, and 52, Regulations No. 70, 1929 Edition.

Item No.	Creditor and nature of claim	Amount
1	Dr. Charles A. Warmer, medical services last illness .....	\$ 1,500.00
2	Robert W. Langley, M. D., medical services last illness .....	200.00
3	Ross Moore, M. D., medical services last illness .....	100.00
4	W. L. Huggins, M. D., medical services last illness .....	100.00
5	F. S. Dolley, M. D., medical services last illness .....	100.00
6	Drs. Lissner & Rosenfeld, medical services last illness .....	100.00
7	Hollywood Hospital, expenses last illness.....	90.50
8	Community Chest, Decedent's pledge .....	300.00
9	Los Angeles Missionary & Church Ext. Soc., Decedent's pledge .....	1,800.00
10	First Methodist Church, Decedent's pledge.....	500.00
11	Citizens National Trust & Savings Bank, Notes .....	35,000.00
12	Citizens National Trust & Savings Bank, Interest accrued to 12/28/30.....	150.83
13	Bullock's, Inc., miscellaneous expenditures account Decedent .....	8,282.01
14	Mae Sampson, Note of Decedent.....	1,032.37
15	Los Angeles Times bill.....	2.50
16	Broadway Florist, flowers .....	35.50
17	Parmalec-Dohrman, kitchen ware .....	6.45
18	Alexandria Florist, flowers .....	11.50
19	Earle C. Anthony, auto repairs .....	7.25
20	Bibliophile Society dues .....	10.00
21	Pacific Coast Club dues.....	11.40
22	Frank Mergenthaler and J. H. Breckenridge, legal services in connection with widening of 9th St. Los Angeles.....	200.00
23	Delinquent 1930 personal property taxes due Los Angeles County .....	7.20
24	R. C. Heinsch, fire insurance premium.....	3.50

Plaintiff's Exhibit No. 2—(Continued)  
Schedule I—(Continued)

Item No.	Creditor and nature of claim	Amount
25	Golden State Co. Ltd., dairy bill.....	24.57
26	Wm. H. Metzger, fire insurance premium.....	28.00
	(Continued on annexed page)	
	Total—from annexed page \$	119.82
	Total .....	\$ 49,723.40

(If more space is needed, insert  
additional sheets of same size)

Estate of William Orlando Sampson, Date of death December 28, 1930.

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## Schedule I (Continued)

27	So. California Gas Co. Dec. 1930 bill.....	\$ 15.81
28	So. California Telephone Co. Dec. 1930 bill.....	7.50
29	Golden State Creamery, December 1930 bill.....	30.81
30	Excelsior Laundry .....	9.66
31	W. H. Metzger Fire Insurance premium.....	2.50
32	Los Angeles Gas & Electric Co.....	6.24
33	Chapman Ice Cream Co. Dec. 1930 bill.....	2.75
34	Los Angeles Water & Power Dept. Dec. 1930 bill .....	4.55
35	Braasch Heater Co.....	18.00
36	Fred Azuma, Nov. 1930 bill.....	22.00
		\$ 119.82

Forward from first 26 items of Schedule I.....\$49,603.58

Total of Schedule.....\$ 49,723.40

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## SCHEDULE J

Mortgages, Net Losses, and Support of Dependents  
Instructions

Mortgages.—Give location of property, name of mortgagee, date and term of mortgage, face amount,

## Plaintiff's Exhibit No. 2—(Continued)

## Schedule J—(Continued)

unpaid balance, rate of interest, date to which interest was paid prior to death. Identify by item number, as listed in Schedule A, the property securing each mortgage. Enter in fourth column accrued interest to the date of death. Mortgages upon, or any indebtedness in respect to, property included in the gross estate is deductible only to the extent that the liability for the mortgage or indebtedness was incurred or contracted bona fide and for an adequate and full consideration in money or money's worth received by the decedent. Unsecured notes should be listed on Schedule I.

Losses.—Losses are strictly limited to those arising from fire, storm, shipwreck, or other casualty, or from theft, to the extent that such losses are not compensated for by insurance or otherwise. Losses must occur during the settlement of the estate. Depreciation in the value of securities or other property does not constitute a deductible loss. In listing losses, full particulars must be given not only as to the loss sustained, but the cause thereof, and in the case of death of livestock, the cause of death must be stated, if known. If insurance or other compensation was received on account of loss, state the amount collected.

Support of Dependents.—No deduction may be taken for support of dependents unless the local law permits the allowance, the local court has made a decree specifying the amount thereof, and in fact the allowance was reasonably required for the sup-

## Plaintiff's Exhibit No. 2—(Continued)

## Schedule J—(Continued)

port of the person in question during the settlement of the estate, and actual disbursement was made from the assets of the estate to the dependents.

For further instructions see articles 38, 39, 40, and 52, Regulations No. 70, 1929 Edition.

Item No.	Mortgages	Unpaid amount at date of decedent's death	Interest accrued to date of death
1	Trust deed covering Item 1, Schedule A, and Item 1, Schedule D-1, Citizens National Trust and Savings Bank, beneficiary, dated May 8, 1928, three years, \$20,000.00 interest 6% paid to Nov. 8, 1930.....	\$ 20,000.	\$ 166.66
	Totals .....	\$ 20,000.	\$ —166.66
	Grand Total .....		\$ 20,166.66
	(If more space is needed, insert additional sheets of same size)		

Item No.	Losses during administration	Amount
		\$
	Total .....	\$
	(If more space is needed, insert additional sheets of same size)	

Item No.	Support of dependents	Amount
1	Widow's allowance granted by Superior Court of Los Angeles County, California, 12 months at \$2,000.00 a month.....	\$ 24,000.00
	Total .....	\$ 24,000.00
	(If more space is needed, insert additional sheets of same size)	

Estate of William Orlando Sampson, Date of death December 28, 1930.

Plaintiff's Exhibit No. 2—(Continued)

[Page 19]

SCHEDULE K

Charitable, Public, and Similar Gifts and Bequests  
Instructions

When a deduction is claimed under this schedule, there must be submitted with the return: (1) Two copies of the will, one of which should be certified, or two copies of the instrument of gift, one of which should be certified or verified. Where decedent was a nonresident, but one copy of the document, certified or verified, need be furnished; (2) an affidavit of the executor showing whether the decedent's will has been, or to the best of his knowledge, information and belief will be contested.

If claim is made for deduction of the value of the residue or of a portion thereof (e. g., present worth of a remainder interest in the residue), there should be submitted a copy of the computation whereby the value was determined.

For further instructions see articles 44 to 47, inclusive, and 54, Regulations No. 70, 1929 Edition.

Item No.	Name and address of beneficiary	Character of Institution	Amount
----------	---------------------------------	--------------------------	--------

Total .....	\$ None
-------------	---------

(If more space is needed, insert additional sheets of same size)

Estate of William Orlando Sampson, Date of death December 28, 1930.

## Plaintiff's Exhibit No. 2—(Continued)

(Page 20)

## SCHEDULE L

## RECAPITULATION

Schedule	Gross Estate	Value
A	Real estate .....	\$ 32,842.46
B	Stocks and bonds (grand total of all pages of this schedule) .....	273,188.53
C	Mortgages, notes, cash, and insurance.....	94,532.38
D-1	Jointly owned property .....	35,532.88
D-2	Other miscellaneous property .....	8,146.67
E	Transfers .....	—
F	Powers of appointment.....	—
G-1	Property identified as previously taxed.....	—
Total Gross Estate .....		\$444,242.92
Schedule	Deductions	Amount
G-2	Deduction for property identified as previ- ously taxed .....	\$ —
H	Funeral expenses .....	2,689.00
	Administration expenses:	
	Executors' commissions Estimated .....	4,796.98
	Attorneys' fees Estimated .....	4,796.98
	Miscellaneous .....	934.05
I	Debts of decedent .....	49,723.04
J	Unpaid mortgages .....	20,166.66
	Net losses during administration.....	—
	Support of dependents.....	24,000.00
K	Charitable, public, and similar gifts and bequests .....	—
	Specific exemption (resident decedents only)*.....	100,000.00
Total Deductions .....		\$207,106.71
Total gross estate .....		\$444,242.92
Total deductions .....		207,106.71
Net Estate for Tax.....		\$237,136.21

\*If decedent died prior to 10:25 a. m., Washington, D. C., time, February 26, 1926, insert \$50,000; if decedent died subsequent thereto, insert \$100,000.



Plaintiff's Exhibit No. 2—(Continued)

SCHEDULE M

DEDUCTIONS—ESTATE OF NONRESIDENT

If the decedent was not a resident of the United States, Hawaii, or Alaska, no deductions whatever are allowable unless the value of that part of his gross estate situated outside the United States, Hawaii, or Alaska is set forth. If it be desired to claim deductions, execute Schedules H-I-J-K and compute the deductions allowable as follows:

- |   |         |
|---|---------|
| 1. Value of gross estate in United States (Schedules A, B, C, D, E, F, G-1).....                  | \$..... |
| 2. Value of gross estate outside the United States (attach itemized schedule showing values)..... | .....   |
| <hr/>   |         |
| 3. Value of total gross estate wherever situation (1 plus 2) .....                                | .....   |
| 4. Gross deductions under Schedules H, I, J.....  | .....   |
| <hr/>   |         |
| 5. Net deductions under Schedules H, I, J (that proportion of 4 that 1 bears to 3*).....          | .....   |
| 6. Schedules G-2 and K (within the United States) .....   | .....   |
| <hr/>   |         |
| 7. Total deductions allowable (5 plus 6).....   | .....   |
| <hr/>   |         |
| 8. Net estate taxable (1 minus 7).....  | .....   |

\*If death occurred prior to 8 a. m., Washington, D. C., time, May 29, the net deductions may not exceed 10 per cent of 1.

Estate of William Orlando Sampson, Date of birth December 28, 1930.

## Plaintiff's Exhibit No. 2—(Continued)

(Page 21)

## SCHEDULE N

## RATES AND TAX DUE

Exceeding—	Net Estate Not exceeding—	Amount of block	(1)*		(2)*		(3)*		(4)*		(5)*	
			Sept. 9, 1916, to	Mar. 3, 1917, to	Mar. 3, 1917, to	Oct. 4, 1917, to	Oct. 4, 1917, to	Feb. 25, 1919, to	Feb. 26, 1926, inclusive	Feb. 26, 1926, to	Feb. 26, 1926, inclusive	On and after Feb. 26, 1926, Rate per cent
	\$50,000	\$50,000	1	1½	1½	2	2	1	1	1	1	\$ 500.00
	50,000	50,000	2	3	3	4	4	2	2	2	2	1,000.00
	100,000	50,000	2	3	3	4	4	2	2	2	3	1,500.00
	150,000	200,000	3	4½	4½	6	6	3	3	3	3	1,500.00
	200,000	50,000	3	4½	4½	6	6	3	3	3	4	1,485.45
	250,000	400,000	4	6	6	8	8	4	4	4	4	
	400,000	50,000	4	6	6	8	8	4	4	4	5	
	450,000	600,000	5	7½	7½	10	10	6	6	6	5	
	600,000	150,000	5	7½	7½	10	10	6	6	6	6	
	750,000	800,000	5	7½	7½	10	10	8	8	8	6	
	800,000	200,000	5	7½	7½	10	10	8	8	8	7	
	1,000,000	1,500,000	6	9	9	12	12	10	10	10	8	
	1,500,000	2,000,000	6	9	9	12	12	12	12	12	9	
	2,000,000	2,500,000	7	10½	10½	14	14	14	14	14	10	
	2,500,000	3,000,000	7	10½	10½	14	14	14	14	14	11	

# Plaintiff's Exhibit No. 2—(Continued)

## Schedule N—(Continued)

Exceeding—	Net Estate Not exceeding—	Amount of block	(1)*		(2)*		(3)*		(4)*		(5)*		
			Sept. 9, 1916, to	Mar. 3, 1917, to	Mar. 3, 1917, to	Oct. 4, 1917, to	Feb. 25, 1919, to	Feb. 26, 1926, inclusive	On and after Feb. 26, 1926, Rate per cent	Rate per cent	Rate per cent	Rate per cent	Amount of Tax
3,000,000	3,500,000	500,000	8	12	16	16	16	12					
3,500,000	4,000,000	500,000	8	12	16	16	16	13					
4,000,000	5,000,000	1,000,000	9	13 1/2	18	18	18	14					
5,000,000	6,000,000	1,000,000	10	15	20	20	20	15					
6,000,000	7,000,000	1,000,000	10	15	20	20	20	16					
7,000,000	8,000,000	1,000,000	10	15	20	20	20	17					
8,000,000	9,000,000	1,000,000	10	15	22	22	22	18					
9,000,000	10,000,000	1,000,000	10	15	22	22	22	19					
10,000,000	.....	.....	10	15	25	25	25	20					

Total Estate Tax Shown by This Return.....\$ 5,985.45

†Credit for estate, inheritance, legacy, or succession tax (see article 9 (a), Regulations 70, 1929 Edition) .....\$ 4,788.36

Credit for gift tax (see article 9 (b), Regulations 70, 1929 Edition) .....

Total Credits .....

Amount of estate tax payable after subtracting credits.....\$ 1,197.09

\$ 4,788.36

\$ 1,197.09

## Plaintiff's Exhibit No. 2—(Continued)

## Schedule N—(Continued)

\*If the decedent's death occurred on the date of the passage of any of the revenue acts imposing the estate tax, care must be exercised to use the rates of tax in force at the exact instant of death. (See article 1, Regulations 70, 1929 Edition.)

†If the decedent died prior to 4.01 p. m., Washington, D. C., time, June 2, 1924, his estate is not entitled to any credit for estate, inheritance, legacy, or succession taxes paid. (See article 9 (a), Regulations 70, 1929 Edition.) Credit can not be allowed for any interest or penalties paid or for any discount allowed. The officer's certificate must show: (1) the total tax determined, (2) the discount allowed, (3) interest and penalties paid, and (4) the total amount paid in cash and the date of payment.

N

Estate of William Orlando Sampson, Date of death December 28, 1930.

A 27

Plaintiff's Exhibit No. 2—(Continued.)

[Page 22]

**JURAT FOR EXECUTORS AND  
ADMINISTRATORS**

I, Mae Sampson the undersigned executrix, do hereby solemnly swear—affirm that on the 23rd day of January, 1931, the Superior court at Los Angeles California granted letters testamentary upon the estate of the foregoing-named decedent to me; that I have made diligent search for property of every kind left by the decedent; that I have carefully read the instructions printed on this form; that hereon is listed all of the property, tangible and intangible, forming the gross estate of the decedent so far as it has come to my knowledge and information; that I have carefully read all instructions under Schedule E of this form, and have made diligent and careful search for information as to whether the decedent, during his lifetime, made any transfers without a fair consideration in money or money's worth, and the answers given to the questions therein contained are true and complete to the best of my knowledge, information, and belief, and that I have no knowledge of any transfers made or trusts created by the decedent within two years of his death involving an amount or value equal to or exceeding \$5,000, other than bona fide sales for a fair consideration in money or money's worth, except as stated in Schedule E; that to the best of my knowledge, information, and belief the value shown for each item of property listed in this return was the fair market value of

## Plaintiff's Exhibit No. 2—(Continued)

the same at the day of decedent's death; and that the debts, expenses, and charges entered herein as deductions from the gross estate are correct and legally allowable.

**JURAT FOR BENEFICIARIES,  
CUSTODIANS, AND TRUSTEES**

I, Mae Sampson the undersigned beneficiary, do hereby solemnly swear—affirm that I have carefully read the instructions printed on this form; that hereon is listed all of the property, tangible or intangible, contained in the gross estate of the decedent which has come into my possession and control; that to the best of my knowledge, information, and belief, the value shown for each item of property listed hereon was the fair market value of the same at the time of the decedent's death; and that the debts, expenses, and charges entered hereon as deductions from the gross estate are correct and legally allowable.

(Name) MAE SAMPSON

(Address) #213 No. Norton Ave.,  
Los Angeles, California.

(Name) .....

(Address) .....

(Name) .....

(Address) .....

Subscribed and sworn to before me, at Los Angeles, California this 16th day of December, 1931.

[Seal] JESS CHENOWETH

Notary Public

My Commission Expires June 8th, 1935.

## Plaintiff's Exhibit No. 2—(Continued)

Note.—If there is more than one executor or administrator, all must sign and swear to the return. (The foregoing jurat may be sworn to before any person authorized to administer oaths except the attorney or attorneys representing the taxpayer. If the officer is a notary public or has an official seal, such seal must be affixed.)

Name and address of attorney

FRANK MERGENTHALER,  
1025 Board of Trade Bldg.,  
Los Angeles, Calif.

A28

[Page 23]

[Illegible] executor desires [illegible] represented by an attorney by correspondence or otherwise, the following power of attorney may be executed. See Treasury Department Circular No. 230 relative to admissions to practice before the Treasury Department. Application for admission should be directed to the Committee on Enrollment and Disbarment, Treasury Department, Washington, D. C., who will, upon request, supply the necessary forms and information. The use of the following form of power of attorney is entirely optional with the executor.

Power of Attorney

I Mae Sampson the undersigned executrix of the estate of the foregoing named decedent, have made, constituted and appointed, and, by these presents, do make, constitute and appoint Frank A. Mergenthaler, 1025 Board of Trade Bldg. of Los Angeles, Cali-

## Plaintiff's Exhibit No. 2—(Continued)

fornia, my true and lawful attorney for me and in my name, place, and stead to appear for and represent me before the Bureau of Internal Revenue, or any unit, division, or agent or employee thereof, relative to the estate tax liability of said estate, giving and granting to said attorney full power and authority to do and perform any and every act and thing relative to the estate tax liability of this estate as full and to all intent and purposes as I might do if personally present.

Dated at Los Angeles, Calif., this 16th day of December, 1931.

MAE SAMPSON

Executed in presence of:

MIRIAM KELLY

JESS CHENOWETH

[Stamped]: Received Jan. 7, 1932, Public Relations Division. Recorded HCB 1/6/32, Estate Tax. Recorded Jan. 7, 1932, Public Relations Division.

Note.—The power of attorney must be witnessed by two disinterested individuals or acknowledged before a notary public, in which case there should be pasted or securely affixed a certificate of acknowledgment in the form provided by the law of the place where the instrument is executed.

A29

[Endorsed]: Filed Dec 14, 1936.



Mr. Mergenthaler: I desire to offer in evidence a 30-day letter from the Treasury Department of the United States, dated April 29, 1932, addressed to Mae Sampson, Executrix, covering the Federal Estate Tax return of W. O. Sampson, deceased.

The Clerk: Plaintiff's Exhibit No. 3.

(The letter referred to was received in evidence and marked "Plaintiff's Exhibit No. 3.")

Mr. Mergenthaler: I would like to offer in evidence a conferee's letter, written by F. I. Lyon, Internal Revenue Agent, dated July 28, 1932, addressed to Mae Sampson, Executrix, in connection with the Federal Estate Tax on the estate of W. O. Sampson, deceased.

In connection with this exhibit, your Honor, I would like to call your Honor's attention to the fact that there have been some pencil or pen corrections in the document which govern the type-writing, because they were initialed by Mr. Lyon. There was a slight error in computation.

It is the pencil notations that govern. That is correct, is it not?

Mr. Mitchell: That is correct.

The Clerk: Plaintiff's Exhibit No. 4.

(The letter referred to was received in evidence and marked "Plaintiff's Exhibit No. 4.")

PLAINTIFF'S EXHIBIT No. 4

A M E N D E D

This summary, executed as directed, is to accompany each report of a final investigation of an estate by a Revenue Agent

TREASURY DEPARTMENT

INTERNAL REVENUE BUREAU—ESTATE TAX

Estate of Wm. O. Sampson	Collection district—6th California
Residence—Los Angeles, California	Reporting officer—Corrie L. Arthur
Date of death—December 28, 1930	Date of report—April 18, 1932
Executor or administrator—Mae Sampson	Address—Los Angeles

(The above data and that required in the first two columns ONLY will be inserted by the investigating officer)

	Returned (Form 706)	Recommended in report	Determined by Commissioner Tentative audit	Final audit
(Gross Estate:				
Real estate .....	32,842.46	32,842.46		
Stocks and bonds.....	273,188.53	321,248.78		
Mortgages, notes, etc.....	94,525.13	95,291.79		
Jointly owned property.....	35,532.88	35,579.45		

## Internal Revenue Bureau—Estate Tax—(Continued)

	Returned (Form 706)	Recommended in report	Determined by Commissioner Tentative audit	Final audit
Other miscellaneous property.....	8,146.67	8,146.67		
Transfers .....				
Powers of appointment.....				
Property previously taxed.....				
Total Gross Estate.....	<u>444,235.67</u>	<u>493,109.15</u>		
Deductions:				
Property previously taxed.....				
Funeral expenses .....	2,689.00	2,689.00		
Executor's commissions .....	4,796.98	.....		
Attorney's fees .....	4,796.98	4,980.42		
Miscellaneous adm. expenses.....	934.05	934.05		
Debts of decedent.....	49,723.04	47,732.87		
Unpaid mortgages .....	20,166.66	20,166.66		
Net losses during settlement.....				
Support of dependents.....	24,000.00	22,000.00		
Charitable, etc., bequests.....				
Specific exemption (resident).....	100,000.00	100,000.00		
Total Deductions .....	<u>207,106.71</u>	<u>198,503.00</u>		

## Internal Revenue Bureau—Estate Tax—(Continued)

	Returned (Form 706)	Recommended in report	Determined by Commissioner Tentative audit	Final audit
Total Gross Estate .....	444,235.67	493,109.15		
Total Deductions .....	207,106.71	198,503.00		
Net Estate .....	<u>237,128.96</u>	<u>294,606.15</u>		
Aggregate tax on all complete blocks.....	4,500.00	6,500.00		
Tax on remainder at.....%	1,485.16	1,784.25		
Gross Tax .....	<u>5,985.16</u>	<u>8,284.25</u>		
Credit for State inheritance taxes.....	4,788.13	5,000.00	+5,968.09	F.I.L.
Credit for gift tax.....				
Net Tax .....	<u>1,197.09</u>	<u>3,284.25</u>	+2,316.16	F.I.L.
Deficiency Tax .....		<u>2,987.16</u>	+1,119.07	F.I.L.

†Pencil notations.

[Endorsed]: Filed Dec. 14, 1936.

Mr. Mergenthaler: I would like to offer in evidence a certified copy of the will of the decedent, certified by the clerk of the Superior Court.

The Clerk: Plaintiff's Exhibit No. 5.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 5.")

## PLAINTIFF'S EXHIBIT No. 5

### WILL

I, William Orlando Sampson, a resident of the City of Los Angeles, County of Los Angeles, State of California, being of the age of forty-six years, do make, publish and declare this my Last Will and Testament, hereby revoking all former wills by me at any time made.

First: I give, bequeath and devise to my beloved wife, Mae Sampson, all of my property of every kind and nature whatsoever and wheresoever situated.

Second: I make no provision for our children, Wilma Maud Sampson, Ruth Anna Sampson, Ralph Herrick Sampson and Clement Griffith Sampson, but leave the care and maintenance of said children to my said wife.

Third: I hereby nominate and appoint my said wife, Mae Sampson, executrix of this my Last Will and Testament, and request that she shall not be required to give any bond for the faithful performance of her duties as such executrix. And I hereby authorize my said executrix to sell, lease or other-

wise dispose of all or any part of my said estate without the order of any Court, at either public or private sale, with or without notice, and for such consideration and upon such terms as my said executrix may see fit.

In Witness Whereof, I have hereunto signed my name at Los Angeles, California, on this 9th day of November, 1918.

WILLIAM ORLANDO  
SAMPSON.

The foregoing instrument was, at the date hereof, by the said William Orlando Sampson signed and published as, and declared to be, his Last Will and Testament, in the presence of us, who, at his request and in his presence and in the presence of each other, have subscribed our names as witnesses hereto.

W. W. Miller, residing at 1943 So. Arlington St., Los Angeles.

W. E. Goodhue, residing at 319 N. Jackson St., Glendale, Calif.

Will admitted to probate this ....day of ....., 193.... Attest: L. E. Lampton, County Clerk. By .....Deputy.

#116257

Filed: Jan. 5-1931. L. E. Lampton, County Clerk.  
By J. R. Sweesy, Deputy.

[Endorsed]: Filed Dec. 4, 1936.

Probate Form 48

No. 116257

State of California,

County of Los Angeles—ss.

I, L. E. Lampton, County Clerk and ex-officio Clerk of the Superior Court within and for the county and state aforesaid, do hereby certify the foregoing to be a full, true and correct copy of the original Last Will and Testament (omitting Certificate of Proof of Will) in the Matter of the estate of William Orlando Sampson, dec'd., as the same appears of record, and that I have carefully compared the same with the original.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Superior Court, this 4 day of Nov., 1936.

[Seal]

L. E. LAMPTON,

County Clerk.

By G. F. COOPER,

Deputy.

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Mr. Mergenthaler: I would like to offer in evidence a certified copy, certified by a clerk of the Superior Court of the State of California, appointing Mae Sampson as Executrix.

The Clerk: Plaintiff's Exhibit No. 6.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 6.") [4]

## PLAINTIFF'S EXHIBIT No. 6

Probate Form 5

In the Superior Court of the State of California  
in and for the County of Los Angeles

In the Matter of the Estate of

WILLIAM ORLANDO SAMPSON, sometimes  
called WILLIAM O. SAMPSON, and W. O.  
SAMPSON,

Deceased.

## LETTERS TESTAMENTARY

State of California,  
County of Los Angeles—ss.

The Last Will and Testament of William Orlando Sampson, sometimes called William O. Sampson and W. O. Sampson, deceased, having been proved and recorded in the Superior Court of the State of California in and for the County of Los Angeles, Mae Sampson, who is named therein as such, is hereby appointed Executrix.

Witness, L. E. Lampton, Clerk of the Superior Court of the County of Los Angeles, with the seal of the court affixed, the 23 day of January, 1931.

By order of the court.

[Seal]                   L. E. LAMPTON,  
County Clerk.

By H. L. PATCH,  
Deputy.



State of California,  
County of Los Angeles—ss.

I do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of California, and that I will faithfully perform, according to law, the duties of Executrix of the last Will and Testament of William Orlando Sampson, deceased.

MAE SAMPSON.

Subscribed and sworn to before me, this 23rd day of January, 1931.

[Seal]                    L. E. LAMPTON,  
County Clerk.

By E. T. CROZIER,  
Deputy.

State of California,  
County of Los Angeles—ss.

I, L. E. Lampton, County Clerk and ex-officio Clerk of the Superior Court within and for the County and State aforesaid, do hereby certify the foregoing to be a full, true and correct copy of the original Letters Testamentary granted herein, as the same appears on file in my office.

I further certify that said Letters have not been revoked and are in full force and effect at the present time, and entitled to full faith and credit.



(Testimony of Mrs. Mae Sampson.)

A. December 28, 1930.

Q. Mrs. Sampson, I show you a document which purports to be an agreement dated May 23, 1929, between William O. Sampson, party of the first part and Mae Sampson, party of the second part, and I ask you whether or not you have ever seen that document before.

A. (Examining document): I have.

Q. Whose signatures are appended to it?

A. Mr. William O. Sampson, my husband, and Mae Sampson.

Q. Is William O. Sampson your former husband?      A. He is.

Q. And this other signature "Mae Sampson" is your signature?      A. It is.

Q. Was a copy of that delivered to you by Mr. Sampson?      A. It was.

Mr. Mergenthaler: If the Court please, I desire to offer this agreement in evidence.

Mr. Mitchell: That is objected to on the ground that it is incompetent, irrelevant and immaterial.

The Court: That is another question of importance in [6] the case, and I will reserve the ruling on it. It may be marked.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 7.")

#### PLAINTIFF'S EXHIBIT No. 7

This Agreement, made this 23rd day of May, 1929, between William O. Sampson, first party, and

(Testimony of Mrs. Mae Sampson.)

Mae Sampson, second party, both residing at Los Angeles, California,

Witnesseth: Whereas, the parties hereto intermarried on or about October 3, 1899, and since that time have been and now are husband and wife and living together as such; and

Whereas, said parties, since the date of their marriage have acquired certain property which, by virtue of the laws of the State of California and/or written agreement between the parties hereto, is the community property of the parties hereto; and the parties hereto are desirous that the rights and interests of the respective parties hereto in and to all their community property be expressly defined and established in accordance with the terms and provisions hereof;

Now, Therefore, in consideration of the love and affection which each of the parties hereto bears unto the other and of other good and valuable consideration, moving from each of the parties unto the other, it is hereby agreed as follows:

1. That all property now owned by the first party shall be and the same is hereby declared to be community property of the parties hereto.

2. That the respective interests of the parties hereto in their community property during continuance of the marriage relation are and shall be present, existing and equal interests under the management and control of the husband, first party hereto, as is provided in Sections 172 and 172 (a) of the Civil Code of the State of California.

(Testimony of Mrs. Mae Sampson.)

3. That this agreement is intended and shall be construed as defining the respective interests and rights of the parties hereto in and to all community property, and the rents, issues and profits thereof, heretofore or hereafter acquired by the parties hereto during the continuance of said marriage relation.

First party does hereby assign, transfer and convey unto second party such right, title and interest in and to said community property as may be necessary to carry into full force and effect the terms of this instrument.

In Witness Whereof, the parties hereto have hereunto set their hands the day and year first above written.

WILLIAM O. SAMPSON.  
MAE SAMPSON.

State of California,  
County of Los Angeles—ss.

On this 23rd day of May, 1929, before me, Laura J. Henderson, a Notary Public in and for said County, personally appeared William O. Sampson and Mae Sampson, known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same.

(Testimony of Mrs. Mae Sampson.)

Witness my hand and official seal.

[Seal]                    LAURA J. HENDERSON,

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Mar. 4, 1930.

[Endorsed]: Filed Dec. 14, 1936.

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By Mr. Mergenthaler:

Q. Mrs. Sampson, did you have any conversation with Mr. Sampson at the time you entered into this agreement which has been offered as Plaintiff's Exhibit No. 7, relative to the purpose of the agreement?

Mr. Mergenthaler:

Q. Will you answer yes or no? [7]

A. Yes.

Q. Where was that conversation had?

A. In our home.

Q. Where was that?

A. At 213 North Norton.

Q. In the city of Los Angeles?

A. In Los Angeles.

Q. And who was present at the time and place?

A. Just Mr. Sampson and myself.

Q. And when did the conversation take place?

A. You mean the date?

Q. The approximate date.

(Testimony of Mrs. Mae Sampson.)

A. Well, I can't give you the exact date.

Q. Did you talk it over beforehand? [8]

A. Yes.

Q. Did he tell you why?           A. Yes.

Q. And that was before you actually signed it?

A. Yes.

Q. What was the conversation then about, the purpose of the agreement?

A. Well, it was to have separate income tax returns, and my having a portion of the interest in it.

Q. Was that—did he say anything about the thing enabling you to return half the income?

A. Yes.

Q. What was that conversation?

A. (Pause): Well, I can't tell you, except that we would make two income tax reports.

Q. Now, Mrs. Sampson, what was the condition of Mr. Sampson's health at the time that he made this agreement of May 29, 19.. May 23, 1929?

A. It was perfect as far as any—

Q. (Interrupting): You saw him every day at that time?           A. Every day.

Q. What was his occupation?

A. Secretary and treasurer of Bullock's.

Q. And did he attend business at Bullock's every day except Sunday?

A. Yes, every day. [9]

Q. And what time did he leave the house in the morning?

A. About a quarter of eight.

(Testimony of Mrs. Mae Sampson.)

Q. What time did he return?

A. At seven-thirty.

Q. He worked six days a week?

A. Yes.

Q. When he came home at night did he have any occupation that kept him busy?

A. Just working on books for two or three nights a week.

Q. How late would he work on the books?

A. Oh, ten or eleven o'clock.

Q. Did he take any exercise at that time?

A. Yes; about once a week.

Q. What form of exercise?

A. Horseback riding.

Q. Did he ever complain of any illness at or about the time the agreement was made?

A. Not any.

Q. Or for any considerable length of time did he make any complaint?

A. Not any.

Q. How about afterwards?

A. Not any.

Q. Coming down to—bringing your attention to November 1930, did Mr. Sampson—what happened in November 1930?

A. Well, he was taken ill. You mean that? [10]

Q. Yes.

A. He was taken ill I should say the 15th of November, or near that, the 15th or 16th of November.

Q. And was he confined to his home?



(Testimony of Mrs. Mae Sampson.)

A. He was confined to his home.

Q. How long was he confined to his home?

A. Just about six weeks, lacking two or three days.

Q. Then what happened after he left the house?

A. He was taken to the Hollywood Hospital.

Q. And how long after that did he die?

A. He died three days afterward.

Q. I think you testified he died of Lobar pneumonia?

A. Yes.

Q. Did Mr. Sampson ever say that this agreement was made in contemplation of death or to take effect at death?

A. No; he did not.

Q. The property that Mr. Sampson then owned was stocks and bonds and real estate?

A. Yes.

Q. Was there any income from that property?

A. From the stocks and bonds?

Q. Stocks and bonds.

A. Yes.

Q. Any other property?

A. Rents.

Q. Were there rents? [11]

A. Yes.

Q. What became of the rents which were received from these properties after May 23, 1929?

A. Well, they were placed—invested, reinvested to pay for stocks and put in the bank, a joint account.

(Testimony of Mrs. Mae Sampson.)

Q. They were deposited in the bank?

A. In the bank in a joint account.

Q. What bank were they deposited in?

A. The Citizen's Security.

Q. Who had—who were entitled to draw against the joint bank account?

A. We were both entitled to draw against it.

Q. Was all the income which was received from these properties deposited in that joint bank account down to the time of Mr. Sampson's death?

A. Yes.

Q. And you continued at all times to have a right to draw on that?

A. Yes sir.

Q. There was a joint bank balance at the time of Mr. Sampson's death?

A. Yes sir.

Q. In the Citizen's Bank?

A. Yes sir.

Q. When Mr. Sampson made this agreement in 1929, was he making any plans as to the future? [12]

A. Nothing.

Q. He was—was there no change?

A. Nothing at all.

Q. Things had gone on just the same as they had been for years before?

A. Absolutely.

Q. Now, Mrs. Sampson, a portion of the property which Mr. Sampson owned on May 2, 1929—

(Testimony of Mrs. Mae Sampson.)

May 23, 1929, was a large block of stock in Bullock's?      A. Yes sir.

Q. Can you give us the history of that stock?

A. Well, in 1922, in May or June, he was given about two thousand and some shares—I can't remember just the figures, two hundred and ninety-three, I think, by Mr. Lutz, Arthur Lutz, and in '25, I think, he bought some one hundred and seventeen shares and also about twenty-eight hundred shares at that time. Later when they reorganized, those shares were exchanged for the twelve thousand five hundred shares of Bullock's. That was all you wanted?

Q. There was eleven thousand one hundred and fifty shares of that stock standing in his name at the date of his death?      A. Yes.

Q. All the real estate was acquired from earnings that Mr. Sampson had made?

A. Yes sir.

Q. When you arrived here—when did you come to California, [13] you and Mr. Sampson?

A. We came the first part of 1910, in January.

Q. What property did you have then?

A. We didn't have anything.

Q. And all the property which was acquired by Mr. Sampson, other than a gift from Mr. Lutz, was acquired how?

A. By his own earnings.

Q. In the State of California?

(Testimony of Mrs. Mae Sampson.)

A. In the State of California.

Q. What was Mr. Sampson's salary at Bullock's subsequent to May 23, 1927—withdraw that.

What was Mr. Sampson's salary at Bullock's subsequent to July 29, 1927?

A. You mean after that, oh, about six hundred dollars a month, six hundred and twenty-five when he passed away.

Q. Did he receive a bonus? A. He did.

Q. What was the amount of that bonus?

A. The amount of the bonus was the amount of his salary.

Q. That bonus was given him each year?

A. Each year. [14]

Q. In other words, at the end of the year they doubled his salary?

A. Yes.

Q. Now, for the years 1929 and for 1930 did you and Mr. Sampson—withdraw the question.

How did you file your income tax returns for the years 1929 and 1930?

A. By two separate tax returns.

Q. One was filed by Mr. Sampson?

A. Yes.

Q. And the other was filed by you?

A. Yes.

Q. And did you divide the income from all of the property owned by you and Mr. Sampson equally on those returns?

A. Yes. [15]

(Testimony of Mrs. Mae Sampson.)

By Mr. Mergenthaler:

Q. Mrs. Sampson, did Mr.—do you know whether or not Mr. Sampson took out any insurance on his life subsequently to May 23, 1929?

A. Yes sir; he did.

Q. Did he take—when was the last insurance he took out?

A. In 1930.

Q. In what month?

A. In November.

Q. The early part of November?

A. Yes.

Q. And how much insurance was taken out at that time?

A. He took out \$10,000 at one time and \$20,000.

Q. And what insurance company was that insurance taken in?

A. The New England.

Q. The New England Mutual Life Insurance Company?

A. Yes.

Q. Do you know how the premiums on the insurance were paid? Was it paid out of Mr. Sampson's salary?

A. It was.

Q. Do you have any means of knowing how much of Mr. Sampson's earnings, made after July 29, 1927, remained in his estate?

A. How much of his earnings remained in the estate?

(Testimony of Mrs. Mae Sampson.)

Q. Yes, either in the form of cash or in the form of investments made from those earnings. [18]

The Court: What percentage was saved?

Mr. Mergenthaler: Yes, your Honor.

The Witness: Well, everything except what it took to live.

By Mr. Mergenthaler:

Q. Do you know what the approximate living expenses were per month?

A. What the living expenses were per month?

Q. Yes, after July 29, 1927.

A. They were—just our ordinary living, you mean?

Q. Yes.

A. Not counting any of the investments, but just the living?

Q. Yes, not what you saved.

A. Well, I should say probably—I can't tell you exactly, I think they varied from \$400 per month or \$350 per month, sometimes.

Q. Would you say \$400 a month would be the amount of the living expenses?

A. The savings, you mean?

Q. The living expenses.

A. Yes, I think that would be just about \$400.

Q. Mrs. Sampson, were the investments bought out of checks drawn on the joint bank account?

A. Yes.

Q. And that practice continued all through?

A. Yes sir. [19]

(Testimony of Mrs. Mae Sampson.)

Q. At the time the joint bank account was opened?

A. Yes.

Cross-Examination

By Mr. Mitchell:

Q. Did you have any account outside—rather did Mr. Sampson have any account outside of the joint bank account on which he drew?

A. Not anything.

Q. How long was the account a joint account at the time of Mr. Sampson's death?

A. Well, it has always been a joint account.

Q. You have always carried a joint account?

A. Always carried a joint account.

Q. A joint account as far back as 1920?

A. Yes sir; further back than that, always.

Q. Did you have a separate account?

A. I did not.

Q. At the time this contract was—by the way, where did you sign this contract, plaintiff's exhibit No. 7?

A. I signed it down in Mr. Sampson's office at Bullock's.

Q. That was on or about the 23rd of May, 1929?

A. Yes.

Q. Who else was present at that time?

A. No one except myself and Miss Henderson, the Notary.

Q. Was that before you had this conversation at home [20] with Mr. Sampson to which you testified, or after?

(Testimony of Mrs. Mae Sampson.)

A. After.

Q. It was after?           A. Yes.

Q. And you didn't pay Mr. Sampson any consideration for the contract did you?

A. No.

Q. Or the transfer, or whatever it was?

A. No.

Q. I mean any money or property?

A. No.

Q. Anything of value?           A. No.

Q. When did he deliver a copy to you?

A. Right after it was signed.

Q. Right after it was signed?           A. Yes.

Q. And what was done with the original?

A. He had the original we kept.

Q. You kept an original?

A. Yes. I couldn't—

Q. (Interrupting) You didn't sign two copies did you? Or did you just have one, the original signed?

A. I don't know. I can't remember. I know I signed papers. I can't tell you that.

Q. Do you recall why the original was not recorded in [21] the County Recorder's Office?

A. I don't know.

Q. At the time of the transfer, when the contract was signed, or at any time thereafter, did Mr. Sampson deliver to you any of the certificates of Bullock's stock or any other certificates evidencing other stock owned by him at that time?

A. No.



(Testimony of Mrs. Mae Sampson.)

Q. Did he deliver to you any of the bonds he owned at the time?

A. (Shaking head negatively.)

Q. Did he deed to you any of the real estate that he owned at that time?           A. No.

Mr. Mergenthaler: If the Court please, I object to that on the ground that it is incompetent, irrelevant and immaterial and has no bearing on any of the issues in this case.

The Court: Well, can't we agree, whatever effect it may have for argument, that there was no transfer or delivery of any property?

Mr. Mitchell: If Mr. Mergenthaler will so stipulate.

The Court: Except what may be assumed to have been transferred by the document itself.

Mr. Mergenthaler: I can't stipulate, your Honor, because certain of this property was actually given to her in the [22] sense that——

The Court: (Interrupting) I mean transfer.

Mr. Mergenthaler: There was no endorsement of certificates and there was no deed. I can stipulate to that. [23]

The Court: At the time of the signing and delivering of Exhibit 7 there was no exchange of any other papers relative to the property, is that true?

The Witness: Yes.

The Court: And later, and pursuant to, there was no division of the property that you two held together, was there?

(Testimony of Mrs. Mae Sampson.)

The Witness: Just the joint tenancy in everything.

The Court: There was no exchange in any papers in regard to the titles?

The Witness: No. [24]

Mr. Mitchell: All right.

Q. I will ask Mrs. Sampson, then, what was done in performance of the contract by Mr. Sampson prior to his death.

A. (Pause) You mean this contract?

Q. This contract, Exhibit 7, yes.

A. Well, nothing, except what was done in May, that I know of. Anything—

Q. (Interrupting) What was done when?

A. What was done in May except the conversations, and what was done in May to execute it. [25]

Q. Now, as far as real estate was concerned, Mrs. Sampson, that stood in Mr. Sampson's name, did it not?

Mr. Mergenthaler: I object to that because it is contrary to the stipulation. The stipulation says that certain real estate was there and if it is limited to that real estate and does not include the joint tenancy real estate I think the question is proper.

Mr. Mitchell: Including, of course, the joint tenancy real estate.

The Witness: Yes.

By Mr. Mitchell:

Q. And was this contract, Plaintiff's Exhibit No. 7, the only documents that were executed at or

(Testimony of Mrs. Mae Sampson.)

about the time of the execution of Exhibit 7 to transfer any interest to you in that real estate?

A. The only document.

Q. That was the only document? [28]

A. Yes.

Q. Now, with respect to the real estate held in joint tenancy, were there any further documents executed by Mr. Sampson or by yourself in respect to the transfer to you of the interest in the joint tenancy real estate other than Plaintiff's Exhibit No. 7? A. No.

Q. Now, in respect to the corporate common and preferred stock, evidenced by certificates, were any documents or instruments executed by Mr. Sampson other than Plaintiff's Exhibit No. 7 in order to transfer any interest to you in that stock?

A. No.

Q. Now, in respect to the bonds payable to bearer, with interest accrued to December, was there any document other than Plaintiff's Exhibit No. 7 executed by Mr. Sampson? A. No sir.

Q. In order to transfer an interest in those bonds to you? A. No sir.

Q. Were the bonds, these bearer bonds—I believe they were—ever delivered to you?

A. No sir.

Q. Physically delivered to you?

A. No sir. [29]

Q. Now, promissory notes with interest. Were those notes, do you know, ever endorsed to you and delivered to you by Mr. Sampson?

(Testimony of Mrs. Mae Sampson.)

A. No; I don't remember.

Q. You don't recall any delivery or execution of any instrument other than Exhibit 7 in order to transfer an interest to you of those notes?

A. Yes.

Q. Did Mr. Sampson deposit all of his salary in this joint account?

A. Practically all of it.

Q. Do you know how long Mr. Sampson had planned to execute a contract similar to this contract, Plaintiff's Exhibit 7, in May 1929? [30]

A. I do not.

Q. Did you ever hear him express an intention of making such a contract prior to a day or two before it was executed? A. Oh yes.

Q. How long prior?

A. Well, I can't tell you just—it was before 1929, I know he had.

Q. You have no idea, then how long. How many times did he discuss it with you before it was executed?

A. Well, it was—I don't know. I couldn't tell you that. It was simply brought up from time to time, more than once or twice. He just spoke about making it, and just as I said it was on account of the income, my having my part in the business.

[31]

Q. What did you say about that?

A. I thought it was all right. I thought it was perfectly legitimate.

Q. Your conversations were about your participating in the business, you say?

(Testimony of Mrs. Mae Sampson.)

A. Well, having my part of the earnings after 33 years of married life. We had always had conversations, and that is absolutely the only way I can answer it.

Q. I see. You were entitled to have some evidence of it?

A. Well, I don't know. He wanted it understood we were in joint tenancy, he and I were joint together with everything that was earned.

Q. Well now, was this in speaking of the joint bank account? A. Everything.

Q. All his earnings? A. Everything.

Q. Anything besides his future earnings—you are speaking of future earnings, or past earnings?

A. Everything, future and past and present.

Q. How about property? A. Everything.

Q. Real estate? A. Yes.

Q. But the plan to execute this agreement, so far as you [32] know, was first mentioned two or three days—

A. (Interrupting) No, more than two or three.

Q. (Continuing) Before it was executed?

A. No.

Q. How long before it was executed?

A. I don't know. I couldn't tell whether it was a few weeks or two or three months, or just exactly. We had spoken, that is all, just referred to it, that it was the proper thing to do. [33]

Mr. Mergenthaler: If the Court please, I would like to introduce another document which I overlooked. It is a certified copy of the order fixing

(Testimony of Mrs. Mae Sampson.)

the California inheritance tax, and shows payment of the tax.

If your Honor please, I would like to offer in evidence a certified copy of the order fixing the inheritance tax in the estate of William O. Sampson in the Superior Court of Los Angeles, and a certified copy of the receipt for inheritance tax for the purpose of showing they were entitled to their 80% credit on the tax.

Mr. Mitchell: We object to that on the ground that the figures have been stipulated to, I believe, haven't they, Mr. Mergenthaler, that is the amount the Plaintiff would be entitled to in the event of a judgment?

Mr. Mergenthaler: No, we have omitted that because—that is another point, your Honor. We cannot make a computation of the tax until the Court has determined the principles involved in the case so that the amount can be figured, and if it is agreeable to Mr. Mitchell and the Court we would like to stipulate that we will make the computation ourselves, later on, and if we cannot agree on the computations we will come in and take additional evidence. That is the method which is pursued under rule fifty before the board of tax appeals, which has a great deal of experience in these cases. They found that was the only practical way to handle the tax [39] matters

The Court: That is satisfactory to the Court.

Mr. Mitchell: Perfectly satisfactory to the Defendant.

(Testimony of Mrs. Mae Sampson.)

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 8.")

[40]

PLAINTIFF'S EXHIBIT No. 8

In the Superior Court of the State of California in  
and for the County of Los Angeles

No. 116257

In the Matter of the Estate of

WILLIAM ORLANDO SAMPSON

Deceased

ORDER FIXING INHERITANCE TAX

John R. Moore, the duly and regularly appointed, qualified and acting inheritance tax appraiser in the above entitled proceeding, having filed herein his written report and appraisal, and no objections thereto having been filed herein, and it appearing to this court that said appraisal has been fairly and regularly made in accordance with law and the order of this court and that said report is true and correct, and that said decedent died on December 28th, 1930.

It is hereby ordered, adjudged and decreed:

First: That said report be, and the same is, hereby approved and confirmed as presented and filed.

Second: That the market value of the property subject to inheritance tax in the above entitled proceeding is \$336,805.62; that the persons to whom said property passed from decedent, their relation-

(Testimony of Mrs. Mae Sampson.)

ship to decedent, the value of their respective interests in said property, and the taxes to which the same are respectively liable, are hereby assessed and fixed as follows:

Name and Relationship	— Value of Interest —	Tax
Mae Sampson, widow	336,805.62	6,231.25

That the total amount of inheritance tax due to the State of California out of said estate is \$6,231.25.

Done in open court this 4th day of May, 1942.

FLORENCE M. BISCHOFF,  
Court Commissioner of  
Los Angeles County.

[Endorsed]: Filed May 4, 1932.

No. 18274

Office of the Treasurer of Los Angeles County, State of California, receipt for inheritance or transfer tax upon property passed from William Orlando Sampson, deceased, who died 12-28, 1930.

Received of Mae Sampson, executrix of the estate of the above-named deceased, the sum of Two Hundred Sixty-three and 16/100 Dollars, being the amount of the inheritance or transfer tax due the State of California under the provisions of the inheritance or transfer tax laws of said State upon the following gifts, legacies, inheritances, bequests, successions and transfers as determined and fixed by an order of the Superior Court of the above-named county, in the matter of the estate of the above-named deceased, heretofore duly made and entered therein.



(Testimony of Mrs. Mae Sampson.)

Name	Relationship	Value of Property Received	Tax
Mae Sampson	widow		6,231.25
	Case #116257		
			6,231.25
Less payment on account Receipt #16937.....			5,000.00
"          "          "          "          18243.....			968.09
	Paid under protest		
Amount of Tax .....			263.16
Amount of Rebate (if paid within six months).....			.....
Amount of Interest (at seven per cent).....			.....
Amount of Interest (at ten per cent).....			.....
Amount due State .....			263.16

Countersigned June 30, 1932.

(Seal) RAY L. RILEY, Controller of State.

By CLARENCE H. SMITH, Deputy.

Dated 6-27, 1932.

H. L. BYRAM,  
County Treasurer.

By E. R. WHITCOMB,  
Deputy Treasurer.

[Endorsed]: Filed Jul. 1, 1932.

(Testimony of Mrs. Mae Sampson.)

In the Superior Court of the State of California in  
and for the County of Los Angeles

No. 116257

In the matter of the estate of  
WILLIAM ORLANDO SAMPSON,  
sometimes called WILLIAM O.  
SAMPSON and W. O. SAMPSON,  
Deceased

State of California  
County of Los Angeles—ss.

#### CERTIFICATE

I, L. E. Lampton, County Clerk and ex-officio Clerk of the Superior Court within and for the County and State aforesaid, do hereby certify the foregoing to be a true, full and correct copy of the original.

#### ORDER FIXING INHERITANCE TAX INHERITANCE OR TRANSFER TAX RECEIPT

on file in my office in the matter of the estate of William Orlando Sampson, sometimes called William O. Sampson and W. O. Sampson, deceased.

That according to the records on file in my office William Orlando Sampson, etc. died on December 28th, 1930. That, so far as the records of my office show, no refund of the inheritance tax paid, or any

(Testimony of Mrs. Mae Sampson.)

part thereof, has been authorized and there is no claim therefor pending.

In witness whereof, I have hereunto set my hand and affixed the seal of said Superior Court this 14th day of December, 1936.

[Seal]

L. E. LAMPTON,

County Clerk and ex-officio  
Clerk of the Superior Court  
of the State of California,  
in and for the County of  
Los Angeles.

By EUNISE KEIFER,  
Deputy.

[Endorsed]: Filed Dec. 14, 1936.

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### Redirect Examination

By Mr. Mergenthaler:

Q. Mrs. Weyman, you testified that the income of all the property covered by this agreement was placed in a joint bank account?

A. Yes sir.

Q. Will you—was there a safe deposit box?

A. Yes sir.

Q. Where was that safe deposit box?

A. At the Citizen's on Hill street.

Q. Were the stocks and bonds and the deeds and the title papers kept in that box?

A. Yes sir.

(Testimony of Mrs. Mae Sampson.)

Q. Did you have access to that box alone without Mr. Sampson? In other words, could you get in to the box without Mr. Sampson being present?

A. No.

Q. Did you both have to be present?

A. Yes, sir.

Q. Was the box in the joint names of you and Mr. Sampson?

A. Yes sir. [41]

Q. There was no different understanding than the agreement?

A. Yes; absolutely.

Q. Was there a different understanding?

A. Then what the agreement was?

Q. Yes.

A. I don't know what you mean. No Mr. Mergenthaler this was the only understanding we had.

Q. That is the only understanding you had with reference to all of the property?

A. Yes.

Q. Now, Mrs. Sampson, in the copy of the tax return, which is offered here as No. 2, there is set out in schedule C a number of policies of insurance that aggregate—the aggregate of which is \$109,-331.88, and was all of that insurance payable to you? Were you the beneficiary under those policies?

A. Yes sir.

Q. Did you collect that insurance?

A. I did.

(Testimony of Mrs. Mae Sampson.)

Q. Of that insurance, I understand \$30,000 of it was [42] taken out in the New England Life Insurance Company in the early part of November, 1930?

A. Yes.

Q. To whom was that policy of policies payable?

A. Payable to me.

Recross Examination

By Mr. Mitchell:

Q. Mrs. Weyman, when was it that this safe deposit box was taken out in your joint names?

A. When we first came to California in 1910.

Q. So at the time this contract in 1929 there was no change in that respect at all?

A. It has always been in joint tenancy as I remember. I couldn't swear to that.

Q. For many years prior to 1929—

A. (Interrupting) We have had a joint—

Q. (Continuing)—you have had a joint bank account, checking account, and a joint safe deposit?

A. I wouldn't say in 1910. I—

Q. (Interrupting) Well, it was many years prior to 1929, probably, was it not?

A. Because we never had any safe deposit boxes until we came to California. I can't remember just when that was turned over to me.

Q. Was it as early as 1920?

A. I think so. [43]

(Testimony of Mrs. Mae Sampson.)

Q. What is that?

A. I think so. I am not sure.

Q. Well, could it have been as late as 1925, or was it before that?

A. I really couldn't tell you.

Q. Well, was it as long as three years before 1929?

A. (Pause) When we commenced to acquire the stock is when we took the box out.

Q. That was sometime around 1922 to 1925?

A. Probably that was it.

Mr. Mitchell: That is all.

Mr. Mergenthaler: That is all.

(Witness excused)——

Mr. Mergenthaler: The Plaintiff rests.

Mr. Mitchell: The Defendant rests.

The Court: Well now, I suppose—I don't know just what you mean by resting in view of the stipulation we have. There may be some other testimony.

Mr. Mergenthaler: We rest, your Honor, until we get the additional evidence in. That is correct, and I have no doubt—I have considerable experience with the Bureau of Internal Revenue and I think there is no question that when the principles are established we will be able to arrive at a computation which will be acceptable to both parties. It is only in case we do get in to a wrangle about that that we will have to offer further evidence. [44]

The Court: Then, on the face of the record it is submitted?

Mr. Mitchell: Yes.

Mr. Mergenthaler: It is submitted subject to that.

Mr. Mitchell: Subject to the matter of the computation.

The Court: It is submitted except as to the computation, the amount of the judgment, if any.

Mr. Mitchell: The amount of judgment, if any.

The Court: All right.

Mr. Mitchell: I desire for the purpose of the record at this time to make a motion of judgment for the defendant on the ground that the evidence is insufficient to warrant a judgment in favor of the Plaintiff, and perhaps I will renew the motion at the time it is finally submitted. [45]

(Thereupon, at 3:40 o'clock P. M. the hearing in the above-entitled matter was concluded)——

[Endorsed]: Filed May 12, 1943. [47]

[Endorsed]: No. 10434, United States Circuit Court of Appeals for the Ninth Circuit. Josephine Welch Overton, as Executrix of the Estate of Galen H. Welch, deceased, formerly Collector of Internal Revenue for the Sixth Collection District of California, Appellant vs. Mae H. Sampson, individually and as Executrix under the Will of W. O. Sampson, deceased, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California Central Division.

Filed May 14, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.



In the United States Circuit Court of Appeals  
for the Ninth Circuit.

No. 10434

JOSEPHINE WELCH OVERTON, as Executrix  
of the Estate of Galen H. Welch, Deceased,  
formerly Collector of Internal Revenue for the  
Sixth Collection District of California,  
Appellant,

vs.

MAE H. SAMPSON, individually and as Executrix  
under the Will of W. O. Sampson, deceased,  
Appellee.

STATEMENT OF POINTS ON WHICH  
APPELLANT INTENDS TO RELY

The issues involved on this appeal are:

(1st) Whether, in and by the May, 1929, instrument of transfer or otherwise, the donor-husband retained, until his death, control, possession, management, enjoyment, powers of disposal or other incidents of ownership of, or other economic benefits arising from the properties to which the transferred interest of the donee-wife attached, within the meaning of Sec. 302(c) of the Revenue Act of 1926?

(2d) Whether the indefeasible passing of decedent's May, 1929, gift to his wife was dependent upon contingencies terminable by the donor-husband's death, within the meaning of Sec. 302(c) of the Revenue Act of 1926?

(3d) Whether, in and by the instrument of trans-

fer or otherwise, the donor-husband retained until his death, exercisable powers to augment, lessen or destroy the donee-wife's enjoyment of the interest transferred to her, of the properties to which it attached, or retained until death the power to divest her of such interest, within the meaning of Sec. 302(d) of the Act?

The validity of the instrument of transfer and its effectiveness to pass an actual property interest to the donee-wife, are not questioned by appellant.

#### Appellant's Contentions.

Appellant contends that the value of the subject matter of the gift is includible in decedent's gross estate under the provisions of both Sections 302(c) and 302(d) of the Revenue Act of 1926, and that the correct answer to the three questions contained in above statement of the issues involved is "Yes".

#### Points relied upon by Appellant.

In support of above contentions appellant will urge the following points, to wit:

(1st) There is no evidence to support the trial court's implied finding to the effect that decedent's gift to his wife was not made by him to minimize Federal taxes.

(2d) There is no evidence to support the trial court's implied finding that none of the properties involved in the gift was traceable to the donor's personal earnings or to his separate property.

(3d) There is no evidence to support the trial court's implied finding that in and by the instrument of transfer the donor did not retain the management and control of the subject matter of the gift.

(4th) There is no evidence to support the trial court's implied finding that possession and enjoyment of such properties were transferred to the donee at the time of the May, 1929, gift, or to the effect that the title to such properties did not remain continuously in the donor's sole name until his death; or that the bearer bonds were delivered to the donee before the donor's death.

(5th) There is no evidence or law to support the trial court's implied finding and conclusion to the effect that there did not exist, after the gift and until the decedent's death, the possibility that the subject matter of the gift and the transferred interest to which it attached would not have reverted to the donor (a) upon the prior death of the donee, intestate, or (b) through the exercise of the donor's reserved rights and powers for his own benefit.

The trial court further erred:—

(6th) In refusing to interpret the instrument of transfer in accordance with the laws of the State of California.

(7th) In impliedly finding and concluding that upon the donor's death in December, 1930, substantial economic benefits and incidents of ownership in respect of the subject matter of the gift did not, for the first time, shift from him to the surviving donee.

(8th) In impliedly finding and concluding that in and by the instrument of transfer or otherwise the donor, in respect of the subject matter of the gift and the income therefrom, if any, did not retain until the moment of his death the following exclusive,

exercisable and enforceable rights, powers, economic benefits, and incidents of ownership, to wit:

(a) To possess, manage, and control such properties;

(b) Short of a gift, to dispose of and to contract respecting such personal properties and to hold the same in his sole name, all for his own benefit;

(c) To contract and incur personal debts, liabilities and obligations on the credit of all such properties, real and personal, and on the credit of the income therefrom, in unlimited amounts and in excess of the value thereof;

(d) To discharge his personal debts, liabilities and obligations with such personal properties and with the income from all of such properties, both before and after death;

(e) To lease such real properties for successive periods of one year and from month to month, to deliver possession to lessees and tenants, and to hold such real properties of record in his sole name;

(f) To wager and speculate with such personal properties, and with the income therefrom and also from such land;

(g) By testamentary direction, to compel his executor to sell specific properties, to which the donee's interest attached, to discharge (1) his personal debts, (2) the expenses of administering his estate, and (3) a family allowance; and

(h) To change the donee's enjoyment of the interest transferred to her and the enjoyment

by her of the properties to which such interest attached.

(9th) In impliedly finding and concluding that in and by the instrument of transfer or otherwise, and before the donor's death, the donee-wife acquired, in addition to certain protective rights and remedies, the right and power to possess, deal with, dispose of, contract respecting, discharge her personal debts with, and contract and incur personal debts, tort and statutory liabilities and obligations on the credit of, her interest and the properties to which such transferred interest attached.

(10th) In impliedly finding and concluding that, prior to the donor's death, the donee's interest in the subject matter of the gift ripened into full dominion.

(11th) In impliedly finding and concluding that the ultimate disposition of such properties to the donee was not held in suspense until the donor's death; and that the gift was complete, in substance, prior to the donor's death.

(12th) In impliedly finding and concluding that the decedent did not retain until his death the power to augment, lessen and completely destroy the donee's enjoyment of her interest and of the properties to which such interest attached.

(13th) In implied finding and concluding that the decedent did not retain until his death the power to divest the donee of her interest in such personal properties by direct disposal for a consideration, and in all of such properties, real and personal, by contracting and incurring personal debts, torts and

statutory liabilities and obligations in excess of the value thereof, with resulting execution sales, bankruptcy or death insolvent.

(14th) In overruling defendant's objections to the form of the Finding and Conclusions proposed by plaintiff.

(15th) In denying defendant's motion for leave to file her amended answer to plaintiffs, original complaint.

(16th) In denying defendant's motion for a new trial.

Dated: May 12, 1943.

LEO V. SILVERSTEIN,  
United States Attorney.

E. H. MITCHELL,  
Assistant United States  
Attorney.

By E. H. MITCHELL,  
Attorneys for Appellant.

(Affidavit of Service of the foregoing document on Frank Mergenthaler, by mailing a copy on May 14, 1943.)

[Endorsed]: Filed May 17, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PARTS OF RECORD  
DEEMED NECESSARY FOR CONSIDERA-  
TION ON APPEAL

Pursuant to Rule 19-6 of this Court, appellant designates the parts of the Record which she thinks necessary for the consideration of the points listed in her Statement of Points on which she intends to rely, filed concurrently herewith, and the parts which she desires to have printed, to wit:

Documents	Pages of Certified Record
1. Names and addresses of attorneys.....	1
2. Complaint and all exhibits attached.....	2
3. Answer .....	17
4. Stipulation waiving jury .....	21
5. Minute order of August 31, 1937, vacating order of submission and resubmitting case to Judge Ralph E. Jenney .....	27
6. The trial court's Minute Order of May 18, 1938 .....	28
7. Minute Order entered January 9, 1941, vacating original Opinion and directing that Findings and Conclusions be prepared by plaintiffs counsel .....	43
8. Order entered February 16, 1942, substituting Josephine Welch Overton, Executrix, as defendant in place of Welch, deceased .....	44
9. Supplemental Complaint filed May 9, 1942 .....	46
10. Answer thereto filed June 10, 1942.....	50

Documents	Pages of Certified Record
11. Defendant's Objections to form of Findings and Conclusions proposed by plaintiff, filed August 8, 1942.....	51
12. Defendant's Notice of Motion for leave to file Amended Answer, filed September 5, 1942 .....	59
13. Minute Order entered September 28, 1942, denying defendants's Motion for leave to file Amended Answer, and amending Findings .....	72 $\frac{1}{2}$
14. Findings of Fact and Conclusions of Law, lodged August 5, 1942, and filed October 7, 1942 .....	73
15. Judgment dated and filed October 7, 1942 .....	91
16. Defendant's Motion for New Trial, filed October 17, 1942 .....	94
17. Order denying defendant's Motion for New Trial, filed November 17, 1942.....	100
18. Plaintiff's Exhibit No. 1, the "Stipulation as to Facts" .....	22
19. Supplemental Stipulation as to Facts, filed June 6, 1938 .....	29
20. Second Supplemental Stipulation as to Facts, filed July 1, 1938 .....	38
21. Third Supplemental Stipulation as to Facts, filed September 6, 1938 .....	41
22. Notice of Appeal, filed February 16, 1943 .....	102
23. Order of March 25, 1943, extending to May 15, 1943, appellant's time to file	



- | Documents  | Pages of Certified Record |
|--|---------------------------|
| record and docket cause on appeal.....   | 108                       |
| 24. Order and Stipulation concerning use<br>on appeal of original exhibits in lieu of<br>copies thereof, dated May 11, 1943.....   | 103                       |
| 25. Stipulation as to contents of record on<br>appeal, dated May 12, 1943.....   | 105                       |
| <p>Note. Omit from the foregoing items, 1 through 25, all titles of court and cause, all signatures and verifications, and all endorsements, but print all order dates, all service and mailing dates, and all filing and entry dates.</p> |                           |
| 26. Plaintiff's Exhibit 2—Federal Estate Tax Return.   |                           |
| <p>Note. Print all of this Exhibit except the blue certificate and except the following pages, to wit: A-3, A-17, A-18, A-19, A-20 and A-25.</p>   |                           |
| 27. Plaintiff's Exhibit 4—Letter from the Revenue Agent to the plaintiff, dated July 28, 1932.   |                           |
| <p>Note. Print only the last page, viz., Form 722, entitled "Amended".</p>   |                           |
| 28. The following portions of the Reporter's Transcript of Proceedings of December 14, 1936, to wit:   |                           |
| <p>Title of court and cause and date of proceedings</p>  |                           |
| Page 2, lines 4 to 16, inclusive   |                           |
| Page 2, line 19, to p. 4, line 3, inclusive  |                           |
| Page 4, lines 7 to 16, inclusive   |                           |
| Page 5, lines 4 to 6, inclusive  |                           |
| Page 5, lines 9 to 13, inclusive   |                           |
| Page 5, line 19, to p. 6, line 1, inclusive  |                           |
| Page 6, line 7, to p. 7, line 4, inclusive   |                           |

Page 7, lines 14 to 18, inclusive

Page 7, line 26, to p. 8, line 13, inclusive

Page 8, line 25, to p. 9, line 15, inclusive

Page 11, line 14, to p. 14, line 13, inclusive

Page 14, lines 18 to 24, inclusive

Page 15, lines 3 to 18, inclusive

Page 20, line 4, to p. 23, line 4, inclusive

Page 24, first part of line 4 reading "The  
Court:"

Page 24, lines 10 to 20, inclusive

Page 25, lines 11 to 20, inclusive

Page 28, line 10, to p. 30, line 11, inclusive

Page 30, line 24, to p. 31, line 8, inclusive

Page 31, line 20, to p. 33, line 9, inclusive

Page 39, line 2, to p. 40, line 3, inclusive

Page 40, lines 25 and 26

Page 41, lines 3 to 23, inclusive

Page 42, line 6, to p. 45, line 14, inclusive

Page 47, lines 3 and 4.

29. Statement of points on which appellant intends to rely, captioned the Circuit Court of Appeals and filed concurrently with this Designation.

Note. Omit title of court, cause and signatures.

30. This Designation.

Dated: May 14, 1943.

LEO V. SILVERSTEIN,  
United States Attorney.

E. H. MITCHELL,  
Assistant United States  
Attorney.

By E. H. MITCHELL,  
Attorneys for Appellant

(Affidavit of Service of the foregoing document on Frank Mergenthaler, by mailing a copy the 14th day of May, 1943.)

[Endorsed]: Filed May 17, 1943. Paul P. O'Brien, Clerk.

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[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF ADDITIONAL PARTS OF  
RECORD APPELLEE DEEMS NECES-  
SARY FOR CONSIDERATION ON AP-  
PEAL

Pursuant to Rule 19-6 of this Court, Appellee designates additional parts of the Record which she thinks necessary for consideration, and which she thinks material to the appeal, and the parts which she desires to have printed, to wit:

Documents

1. Plaintiff's Exhibit No. 2, all of Schedule A, excepting the blue certificate.
2. Plaintiff's Exhibit No. 5, Will of W. O. Sampson, deceased.
3. Plaintiff's Exhibit No. 6, Letters Testamentary upon the Will of W. O. Sampson, deceased.
4. Plaintiff's Exhibit No. 7, Agreement dated May 23, 1929.
5. Plaintiff's Exhibit No. 8, Order of the Superior Court of Los Angeles County fixing California

Inheritance Tax upon the Estate of W. O. Sampson, deceased.

6. The following portions of the Reporter's Transcript of Proceedings of December 14, 1936, to wit:

Page 9, line 16 to p. 11, line 13, inclusive

Page 18, line 1, to p. 20, line 2, inclusive

7. This Designation.

Dated: May 24, 1943.

FRANK MERGENTHALER,  
Attorney for Appellee.

(Affidavit of Service of the foregoing document by mail to Leo H. Silverstein and E. H. Mitchell, by mailing copy on May 25, 1943.)

[Endorsed]: Filed May 26, 1943. Paul P. O'Brien, Clerk.